

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 802.

W. E. JOHNSON, T. E. BRENTS, AND H. F. COGGESHALL,
APPELLANTS,

v.

EDWIN GEARLDS, L. J. KRAMMER, FRED E. BRINKMAN,
ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA.

FILED OCTOBER 4, 1918.

(28958.)

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INDEX.

	Orig. inal.	Print.
Caption.....	1	1
Amended bill of complaint, Jan. 9, 1911.....	2	1
Demurrer.....	36	22
Order overruling demurrer, etc.....	39	24
Opinion of Willard, J.....	41	24
Order for temporary injunction.....	68	41
Amended bill of complaint, Mar. 28, 1911.....	71	43
Reamended answer.....	106	66
Stipulation to submit, etc.....	115	72
Decree.....	117	73
Petition for appeal.....	120	74
Assignment of errors.....	121	74
Stipulation waiving appeal bond.....	123	75
Citation and service.....	124	76
Order enlarging time for docketing case.....	129	78
Praeclipe for transcript.....	131	78
Clerk's certificate.....	132	79



1 United States District Court, District of Minnesota, Fourth Division.

EDWIN GEARLDS, L. J. KRAMER, FRED E. BRINKMAN, E. E. Gearlds, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, complainants.

vs.

W. E. JOHNSON, T. E. BRENTS, AND H. F. COGGESHALL, defendants.

In equity No. 1007.

Pleas before the honorable the judges of the District Court of the United States of America, for the District of Minnesota, for the April term, A. D. 1912, of said court, held in the city of Minneapolis, in said district, in the year 1912.

DISTRICT OF MINNESOTA, *ss.*:

Be it remembered that on this 9th day of January, A. D. 1911, came the complainants above named by Marshall A. Spooner and E. E. McDonald, their attorneys, and filed in the clerk's office of said court their amended bill of complaint herein, which is in the words and figures following, to wit:

2 In the Circuit Court of the United States for the District of Minnesota, Fourth Division.

EDWIN GEARLDS, L. J. KRAMER, FRED E. BRINKMAN, E. E. Gearlds, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, complainants,

vs.

W. E. JOHNSON, T. E. BRENTS, AND H. F. COGGESHALL, defendants.

In equity.

To the honorable the judges of the Circuit Court of the United States for the District of Minnesota:

Edwin Gearlds, L. J. Kramer, Fred E. Brinkman, E. E. Gearlds, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, each a resident of the city of Bemidji, Beltrami County, in the State of Minnesota, and each a citizen of the State of Minnesota, bring this bill against W. E. Johnson, a citizen of the State of California; T. E. Brents, a citizen of the State of Oklahoma, and H. F. Coggeshall, a citizen of the State of New York, and thereupon your orators complain and say:

That your complainant, Edwin Gearlds, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than two years continuously last past has been engaged at the 3 said city of Bemidji in the business of saloon keeper and in the selling and disposing at retail of spirituous, vinous, and

malt liquors at a known and established place of business, to wit, in a store building on lot eight (8) in block fourteen (14) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the internal revenue department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said Edwin Gearlds also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji authorizing and permitting the said Edwin Gearlds to conduct such saloon business and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, L. J. Kramer, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than two years continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous, vinous, and malt liquors at a known and established place of business, to wit: In a store building on lot fourteen in block fourteen (14) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the internal revenue department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said L. J. Kramer also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji authorizing and permitting the said L. J. Kramer to conduct a saloon

business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, Fred E. Brinkman, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for fourteen years continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous, vinous, and malt liquors at a known and established place of business, to wit: In a store building on lot ten (10) in block seventeen (17) in said city of Bemidji, and

5 was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the internal revenue department of the United States Government, the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place and during such period in quantities less than five (5) gallons at a time; that the said Fred E. Brinkman also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji, authorizing and permitting the said Fred E. Brinkman to conduct such saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, E. E. Gearlds, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than three years continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous, vinous, and malt liquors at a known and established place of business to wit: In a store building on lot eleven (11), in block fourteen (14), in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government, the

6 sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include

the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt thereof, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said E. E. Gearlds also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji, authorizing and permitting the said E. E. Gearlds to conduct such saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times herein-after referred to.

That the said complainant, Albert Marshik, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than one year continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous, vinous, and malt liquors at a known and established place of business, to wit: In a store building on lot six (6), in block seventeen (17), in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the internal revenue department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said com-

7 plainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said Albert Marshik also held at all such times, and now holds, a license issued on the authority of the State of Minnesota and by the municipal council, and the officials of the said city of Bemidji, authorizing and permitting the said Albert Marshik to conduct a saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, John A. Dalton, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than three years continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous, vinous, and malt liquors at a known and established place of business, to wit: In a store building on lot one (1), block seventeen (17), in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal

authority, in that the said complainant duly paid to the internal revenue department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a

receipt for such special tax on the business of retail liquor
8 dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said John A. Dalton also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji authorizing and permitting the said John A. Dalton to conduct a saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, Edwin Fay, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than one year continuously last past has been engaged, at said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous, vinous, and malt liquors at a known and established place of business, to wit: In a store building on lot eight (8), in block eighteen (18), in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the internal revenue department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and

including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said Edwin Fay also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji, authorizing and permitting the said Edwin Fay to conduct such saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the said complainant, F. S. Lycan, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than four years last past has been engaged, at said city of Bemidji, in the business of operating and conducting a bar, in connection with and incidental to a hotel business conducted by said complainant in the Markham Hotel Building situated on lots thirteen (13) and fourteen (14) in block eighteen (18) in the original townsite of Bemidji, Minnesota, at which bar said complainant has been engaged in the selling and disposing at retail of spirituous, vinous, and malt liquors, and was and is authorized to conduct such business by both Federal and municipal authorities, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and the said complainant was authorized, by reason of such payment and 10 the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said F. S. Lycan also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by municipal council, and the officials of the said city of Bemidji authorizing and permitting the said F. S. Lycan to conduct such bar and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the said complainant, John H. Sullivan, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than five years continuously last past has been engaged at said city of Bemidji in the business of saloon keeper and in the selling and disposing at retail of spirituous, vinous, and malt liquors at a known and established place of business, to wit, in a store building on lot one (1) in block twenty-one in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said

receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than
11 five (5) gallons at a time; that the said John H. Sullivan also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji authorizing and permitting the said John H. Sullivan to conduct such saloon business and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, Harry Gunsalus, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than one year continuously last past has been engaged, at said city of Bemidji, in the business of saloon keeper, and the selling and disposing at retail of spirituous, vinous, and malt liquors at a known and established place of business, to wit, in a store building on lot eleven (11) and twelve (12) in block (17) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the
12 said Harry Gunsalus also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji, authorizing and permitting the said Harry Gunsalus to conduct a saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, J. E. Maloy, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than three years continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous, vinous, and malt liquors at a known and established place of business, to wit, in a store building on lot (5) in block seventeen (17) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of

retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period between and including July 1st, 1910, and June 21st, 1911, and the said complainant was authorized by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said J. E. Maloy also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by municipal council, and the officials of 43 the said city of Bemidji, authorizing and permitting the said J. E. Maloy to conduct a saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, Tillie Larson, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than four years continuously last has been engaged, at the said city of Bemidji, in the business of saloon-keeper, and in the selling and disposing at retail of spirituous and malt liquors at a known and established place of business, to wit: lot eight (8) in block seventeen (17) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the internal revenue department of the United States Government, the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said Tillie Larson also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji authorizing and permitting the said Tillie Larson to conduct a saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the value of the personal property and of the business of each of said complainants herein referred to, and which will be affected by the acts of the defendants herein mentioned, exceeds the sum of two thousand dollars (\$2,000) in each instance, exclusive of interest and costs, and said complainants and each of them will be damaged

in an amount exceeding two thousand dollars (\$2,000) each, exclusive of interest and costs, in case the defendants and each of them proceed to do the acts and things herein complained of, and the matter in dispute herein as respects each of said complainants, exclusive of interest and costs, exceeds the sum of two thousand dollars (\$2,000).

14 Your orators further say that they each, in vending and disposing of liquors under their said licenses, have refrained from selling or disposing of any liquor to Indians or individuals of Indian blood, and each has, in every way and in all respects, complied with and observed all laws of the United States and of the State of Minnesota providing against the sale of liquor to Indians or enacted to prevent liquor coming into their possession, and each of your orators has endeavored to obey, and has obeyed, and complied with all laws regulating the sale of, and traffic in, such liquors.

Your orators each further say that each of them has built up and established a profitable and lucrative trade in his respective place of business, as hereinbefore described and set forth, and that each of said complainants will be affected by the acts of the defendants if done and carried out as by them threatened, and as hereinafter more particularly set forth, and that each of said complainants has a common interest in any restraining or injunctional order herein sought and in any such remedy as in this proceeding it is sought to have administered, and by joining in this action and in seeking the relief herein asked these complainants seek to avoid a multiplicity of actions and suits, and your orators further say that unless the said defendants are restrained and enjoined from doing the acts herein-after set forth the established business of each of these complainants will be destroyed and ruined, and your orators are without any plain, adequate, or speedy remedy at law and can only have relief in a court of equity, and that irrevocable injury will be inflicted upon your orators, and each of them, in case this *this* honorable court does not enjoin and restrain the defendants, and each of them, from doing and performing the acts and things hereinafter referred to and which said defendants and each of them now threaten to do.

Your orators further say that Beltrami County, Minnesota, 15 is now, and ever since the year 1897, has been a municipal corporation duly organized, created, and existing under and by virtue of the laws of the State of Minnesota, and forming a part of said State, and as such county has had within its territory, during all the time elapsing since its organization, the usual county, town, city, and village officers and the various forms of local government as provided for and prescribed by the laws of the State of Minnesota applying to organized counties and lesser political subdivisions; that the city of Bemidji, herein referred to, is the county seat of said Beltrami County, and is a municipal corporation organized under the laws of the State of Minnesota as a city and within its corporate limits contains a population of about seven thousand inhabitants, and in connection with other municipalities, to wit, villages under sepa-

rate organizations, but immediately adjacent to the territorial limits of said municipality and which latter, except for the fact that they exist under a separate and distinct governmental organization, are commercially a part of said city, constitutes a community which has a population of about 9,000 people; that the original form of government of the said Bemidji was that of a village form of government under the laws of the State of Minnesota and such village was organized under the laws of said State in the year 1898; that said city of Bemidji is, and since its original organization as a village, has been, a growing and thrifty town increasing rapidly in population, and the country tributary thereto has had and enjoyed a like growth; that there are many blocks of substantial business buildings, largely brick and stone, in said city and hundreds of beautiful costly residences, nine churches of nine different denominations, four costly and expensive schoolhouses, a costly public library, a courthouse and other county property of the value of at least one hundred thousand dollars, ten hotels, an extensive system of water works, and an electric light plant; the city is situated on five lines of railroad, three of said

lines being either transcontinental or parts of transcontinental lines and said city is now recognized as the metropolis of the northern central portion of Minnesota; that within the immediate vicinity of the said city of Bemidji are many smaller flourishing and thrifty towns; that there are situated on the Minnesota & International Railway, which is a part of the Northern Pacific Railway system, north of said city of Bemidji and between said city and the boundary line between the United States and Canada, a distance of 108 miles, seventeen stations and towns; that there are situated on the Great Northern Railway, between said city of Bemidji and the Red River of the North, on the line of said railway, running east and west through said city of Bemidji, in a distance of 92 miles, fifteen thriving and important towns; that there are situated on said Great Northern Railroad, east of the said city of Bemidji and between said city of Bemidji and the city of Duluth, Minnesota, within a distance of 150 miles, twenty flourishing and thriving villages and towns; and that south of the said city of Bemidji, on said Northern Pacific line, between it and the city of Brainerd, which is practically, the geographical center of the State of Minnesota, and within 92 miles are sixteen important and thriving towns and stations; that within a distance of 87 miles of said city of Bemidji on the Sauk Center branch of the Great Northern Railroad there are twelve or more prominent, prosperous, thriving towns and villages; that on the Minneapolis, St. Paul & Sault Ste. Marie Railroad, recently built through the said city of Bemidji and which said line has been projected as the main and direct line of said road between the city of Winnipeg, Canada, and the city of Chicago, Ill., and within a distance of 40 miles in either direction from said city of Bemidji on said line, there are at least twenty thriving and growing towns and villages; that the assessed value of real and personal property for the purpose of taxation is now the sum of 1,615,572

17 dollars; that the assessed valuation of real and personal property for the purpose of taxation in said Beltrami County is now the sum of 6,881,175 dollars; that the assessed valuation of all the counties affected by such treaty of 1855 was, in the year 1909, \$93,910,142; that many farms have been opened up in all directions from said city of Bemidji and the country adjacent thereto not already opened up is rapidly being taken up and converted into farms, and with the exception of the few scattering Indian reservations herein-after referred to and there are no Indians residing outside of said reservations, the territory is populated with white people. And your orators further state that there are to-day within the limits of the territory originally ceded to the United States under the provisions of the said treaty of 1855 less than two hundred Indians not now allottees; that there is no Indian reservation within twenty miles of the said city of Bemidji; that Indians very infrequently visit the city of Bemidji, and then only in small numbers, and for the purpose of selling berries during the berry season; and there are no Indian habitations within a range of twenty miles in any direction from the said city of Bemidji, and said city of Bemidji now is and for at least twelve years last past has been, as well as the territory surrounding the same, except said reservation, under municipal and State government and in all said territory, except said reservation, the jurisdiction of the State for all purposes of government has been full and complete and since the year 1867, as hereinafter more fully set forth, the Indian title to the territory embraced within the city limits of the said city of Bemidji and within the territory for a number of miles adjacent thereto has been completely extinguished.

Your orators further say that prior to the 22nd day of February, 1855, a tribe of Indians, known as Chippewa Indians, comprising the Mississippi, Pillager, and Lake Winnibegoshish bands of Chippewa Indians were in possession of the greater portion of the lands north of parallel 46 within the boundaries of the then Territory of Minnesota, and on said date the said bands of Indians entered into a treaty with the United States under the terms of which there was sold and conveyed to the said United States all the right, title, and interest in and to the lands then owned and claimed by the said bands of Indians in the Territory of Minnesota north of a line near to said 46th parallel of latitude, excepting, that by the second 18 article of said treaty there were set apart to the said Indians certain scattering reservations, none of which latter included any lands at any time within the municipal limits of the said city of Bemidji, nor any lands adjacent thereto, or within at least ten miles thereof, and under the terms of such treaty, the United States took over and became the owner and possessed of the lands now within the territorial limits of the said city of Bemidji, and all lands adjoining and contiguous thereto for many miles to the north, west, and south, and for at least ten miles to the east of where said

city is now located; that among other provisions of the said treaty there was included in the said treaty the following language:

"Article 7. The laws which have been or may be enacted by Congress, regulating trade and intercourse with the Indian tribes, to continue and be in force within the several reservations provided for herein; and those portions of said laws which prohibit the introduction, manufacture, use of, and traffic in ardent spirits, wines, or other liquors in the Indian country shall continue to be in force within the entire boundaries of the country herein ceded to the United States, until otherwise provided by Congress."

Your orators say that they are advised and believe, and accordingly state, that the defendants have done the acts hereinafter referred to, and are about to do and perform the things hereinafter complained of, claiming to derive their authority so to do, largely if not entirely, from the provisions contained in said article 7.

Your orators further state that these defendants, and especially the defendants, W. E. Johnson and T. E. Brents, acting in conjunction and in unison as special officers connected with the Indian Department as administered by the Interior Department of the United States Government, and claiming to act under authority conferred by said article 7 of said treaty aforesaid, and the provisions of

19 sections 2139 and 2140 of the United States Statutes and amendments thereof, have at divers and sundry towns and cities of northern Minnesota, and included within the territory ceded to the United States Government under the said treaty of February 22d, 1855, and which treaty was ratified March 3d, 1855, and proclaimed April 7th, 1855, including the city of Brainerd, the county seat of Crow Wing County in said State; the village of Walker, the county seat of Clearwater County in said State; the village of the county seat of Clearwater County in said State, the village of Grand Rapids, the county seat of Itasca County in said State; the village of Park Rapids, the county seat of Hubbard County in said State; the city of Detroit, the county seat of Becker county in said State; and in many other towns and villages in said territory, ceded as aforesaid, and in each of which places and over the inhabitants of which the jurisdiction of the State for all purposes of government was full and complete and generally and universally recognized so to be, entered upon private property where individuals and concerns were engaged in the sale of intoxicating liquors, and in each of which instances the persons and concerns so engaged held licenses from the United States Government to sell at retail, and also licenses from the county or municipal government to sell and dispose of such liquors under licenses authorized to be issued under the laws of the State of Minnesota, and in many instances destroyed such liquors in stock, and in other instances compelled the proprietors engaged in the business of vending such liquors to ship the same to other and remote portions of the said State and into territory beyond the limits of the land ceded by the said Chippewa Indians to the United States under said treaty, and then and there claimed and

asserted that the city of St. Paul was the nearest point into which intoxicating liquors might be shipped, and the nearest point in the State not coming within the provisions of some similar treaty provision against the introduction and presence of intoxicating liquor into and in Indian country, and ordered and directed the proprietors of such places to close up their places of business and to 20 desist from further engaging in such business at such places, and have threatened to arrest and prosecute such proprietors, under the claim that they are unlawfully selling and disposing of liquor in "the Indian country," contrary to the provisions of the said statutes and the said article 7 of said treaty, and the said defendants, and especially the said T. E. Brents and H. F. Coggeshall, acting jointly and in unison, did, on the 29th day of December, 1910, order and direct —— other saloon keepers in the said city of Bemidji, holding licenses issued by the Federal Government to sell intoxicating liquors at retail in quantities less than five (5) gallons at a time, and holding municipal licenses issued under the authority of the State of Minnesota, to vend intoxicating liquors, to close up their places of business, and to desist further in the sale and disposition of such liquors in said city of Bemidji, and ordered and directed said saloon keepers to ship out such stocks of goods as they had on hand, and on such day and date, to wit, the said 9th day of December, 1910, these defendants, T. E. Brents and H. F. Coggeshall, acting jointly in the premises, and as your orators state and charge, in connection with the defendant, W. E. Johnson, and under his instructions, and in conjunction with the said Johnson, in the execution of his orders, to direct and command each of the several complainants herein to desist from further engaging in the business of selling and disposing of intoxicating liquors in the city of Bemidji, did then and there order and command each of the said complainants to close up his place of business and to remove and ship out his stock of liquors, of which each of the said complainants then had on hand a quantity, and did command each of these complainants to refrain from further engaging at said city of Bemidji in the business of selling and disposing of intoxicating liquors. That the defendants, and each of them, are now threatening, in case said complainants, or either of them, fail to observe 21 the order so given, to enter upon the premises of each of the said several complainants and to close up the business of said complainants, and each of them, and to destroy the stocks of liquor now in the possession of said complainants, and each of them, and the utensils and wares used and employed in the vending of the same, and to ruin and destroy the established business of each of the said complainants, and the said defendants, and each of them, further threaten in the event of the refusal of the said complainants, or either of them, to obey and recognize the orders so given to arrest and cause to be arrested said complainants, and each of

them, charged with the unlawful introduction, sale, and disposition of intoxicating liquors as in "the Indian country."

That during the fifty-five years elapsing since the making of said treaty of 1855, no effort has been made, either by Federal or State authority until within the last year, to prevent the introduction into, sale of, and traffic in intoxicating liquors in any of the lands ceded by the Chippewa Indians to the United States under said treaty of 1855, except inside of the limits of actual Indian reservations; and during all said period, and for more than thirty years last past, licenses have been granted by State and municipal authorities to engage in the sale and disposition of intoxicating liquors in all such territory outside of said reservations, and during all such time the United States Government has accepted and received, from persons desiring to engage in such business, special tax on the business of retail liquor dealer in all of said territory outside of said reservations and has issued its receipts therefor, which conferred upon the individuals to whom the same were issued the authority of the United States Government to sell and dispose of intoxicating liquors, in quantities of less than five (5) gallons at a time, and it has only been within the last several months that representatives and agents of the Indian Department have undertaken to prevent the 22 *the introduction and sale of liquor in said country, or to interfere with, or molest, persons engaged in the sale and disposition of intoxicating liquor in any portion of said ceded territory.*

And your orators reiterate that neither of the defendants is a citizen of the State of Minnesota, nor resident thereof, nor has any property therein; and these complainants further say, on information and belief that defendants are not financially responsible, and that any judgment that might be recovered against defendants, or either of them, in an action at law would not be collectible; that these complainants have no remedy against said defendants should they carry out such threats, as aforesaid, than may be afforded to these complainants in this equitable proceeding; and your orators say that they believe that unless restrained and enjoined by the court from so doing said defendants will proceed to carry out their threats so made, and will, under their assumption of authority so to do, close up the places of business of said complainants, and each of them, and will ruin and destroy the business of each of the said complainants, and will waste and destroy the stocks of liquor of the said several complainants, and the utensils and wares by them used in carrying on such business, and will attempt to carry out their threats to cause the arrest and prosecution of said complainants, and each of them, under a charge and charges to be lodged by said defendants, and each of them, against complainants, and each of them, of unlawfully selling and disposing of intoxicating liquors in "the Indian country," and of a violation of the provisions of sections 2139 and 2140 of the United States Statutes and amendments thereof.

And your orators further say, that after the making and proclamation of said treaty of 1855, as aforesaid, and on the 7th day of May, 1864, the said Chippewa Indians and the United States entered into another treaty, which treaty was ratified on the 23 9th day of February, 1865, and was proclaimed on the 20th day of March, 1865, and under and by the terms of article 2 of which treaty, in consideration of the session to the United States Government by the said Chippewa Indians of certain reservations included within the provisions of the said treaty of 1855, and other considerations, there was set apart for the future home of the Chippewas of the Mississippi all the lands embraced within the following described boundaries (excepting the reservation made and described in the third clause of the second article of the said treaty of February 22d, 1855, for the Pillager and Lake Winnebagoshish bands): That is to say, beginning at a point one mile south of the most southerly point of Leach Lake and running thence in an easterly course to a point thence one mile south of the most southerly point of Goose Lake, thence due east to a point due south from the intersection of the Pokagomin reservation and the Mississippi River, thence on the dividing line between Deer River and lakes, Mashkordens River and lakes, until a point is reached north of the first-named river and lakes; thence in a direct line northwesterly to the outlet of Two Route Lake, then in a southwesterly direction to Turtle Lake, thence southwesterly to the head water of Rice River, thence northwesterly along the line of the Red Lake Reservation to to the mouth of Thief River, thence down the centre of the main channel of the Red Lake River to a point opposite the mouth of Black River, thence south-easterly in a direct line with the outlet of Rice Lake to a point due west from the place of beginning, thence to the place of beginning.

Your orators further say that the lands so set apart to the said Chippewas of the Mississippi contained all the territory now within the territorial limits of the city of Bemidji, and all the lands immediately adjacent thereto and distant several miles in all directions therefrom, and that by the terms of said treaty of 1864 the 24 Mississippi Band of Chippewa Indians became repossessed of, and the sole owners of, all the lands now within the city limits of the said city of Bemidji, and all the lands immediately adjacent thereto for a number of miles in each and every direction.

Your orators further say that again and on the 19th day of March, 1867, the Chippewas of the Mississippi, being the owners and in possession of the territory last referred to, and the United States Government again entered into another and new treaty which involved the said lands, and which treaty was ratified on the 8th day of April, 1867, and proclaimed on the 18th day of April, 1867, and which treaty was and is in its entirety as follows to wit:

TREATY WITH THE CHIPPEWAS OF THE MISSISSIPPI, 1867.

Articles of agreement made and concluded at Washington, D. C., this 19th day of March, A. D. 1867, between the United States, represented by Louis V. Bogy, special commissioner thereto appointed; William H. Watson and Joel B. Bassett, United States agent, and the Chippewas of the Mississippi, represented by Que-we-zance or Hole-in-the-day, Qui-we-shen-shis, Wau-bon-a-quot, Min-e-do-wob, Mijaw-ke-ke-shik, Shob-osk-kunk, Ka-gway-dosh, Me-no-ke-shik, Way-namee, and O-gub-ay-gwan-ay-aush.

Whereas by a certain treaty ratified March 20th, 1865, between the parties aforesaid, a certain tract of land was, by the second article thereof, reserved and set apart for a home for the said bands of Indians, and by other articles thereof provisions were made for certain moneys to be expended for agricultural improvements for the benefit of said bands; and whereas it has been found that the said reservation is not adapted for agricultural purposes for the use of such of the Indians as desire to devote themselves to such pursuits, while a portion of the bands desire to remain and occupy a part of the aforementioned reservation and to sell the remainder thereof to the United States: Now, therefore, it is agreed—

25 Article 1. The Chippewas of the Mississippi hereby cede to the United States all their lands in the State of Minnesota, secured to them by the second article of their treaty of March 20, 1865, excepting and reserving therefrom the tract bounded and described as follows, to wit: Commencing at a point on the Mississippi River, opposite the mouth of Wanoman River, as laid down on Sewall's map of Minnesota; thence due north to a point two miles further north than the most northerly point of Lake Winnibigoshish; thence due west to a point two miles west of the most westerly point of Cass Lake; thence south to Kabekona River; thence down said river to Leech Lake River; thence down the main channel of said river to its junction with the Mississippi River, and thence down the Mississippi to the place of beginning.

And there is further reserved for the said Chippewas out of the land now owned by them such portion of their western outlet as may upon location and survey be found to be within the reservation provided for in the next succeeding section.

Article 2. In order to provide a suitable farming region for the said bands there is hereby set apart for their use a tract of land, to be located in a square form as nearly as possible with lines corresponding to the Government surveys; which reservation shall include White Earth Lake and Rice Lake and contain thirty-six townships of land; and such portions of the tract herein provided for as shall be found upon actual survey to lie outside of the reservation set apart for the Chippewas of the Mississippi by the second article of the treaty of March 20, 1865, shall be received by them in part consideration for the cession of lands made by this agreement.

Article 3. In further consideration of the lands herein ceded, estimated to contain about two million acres, the United States agree to pay the following sums to wit: Five thousand dollars for the erection of school buildings upon the reservation provided for in the 26 second article; four thousand dollars each year for ten years, and as long as the President may deem necessary after the ratification of this treaty, for the support of a school or schools upon said reservation; ten thousand dollars for the erection of a sawmill, with gristmill attached, on said reservation; five thousand dollars to be expended in assisting in the erection of houses for such of the Indians as shall remove to said reservation.

Five thousand dollars, to be expended with the advice of the chiefs in the purchase of cattle, horses, and farming utensils, and in making such improvements as are necessary for opening farms upon said reservation.

Six thousand dollars each year for ten years, and as long thereafter as the President may deem proper, to be expended in promoting the progress of the people in agriculture and assisting them to become self-sustaining by giving aid to those who will labor.

Twelve hundred dollars each year for ten years for the support of a physician and three hundred each year for ten years for necessary medicines.

Ten thousand dollars to pay for provisions, clothing, or such other articles as the President may determine, to be paid to them immediately on their removal to their new reservation.

Article 4. No part of the annuities providing for, in this or any former treaty with the Chippewas of the Mississippi bands, shall be paid to any half-breed or mixed blood, except those who actually live with their people upon one of the reservations belonging to the Chippewa Indians.

Article 5. It is further agreed that the annuity of \$1,000 a year which shall hereafter become due under the provisions of the third article of the treaty with the Chippewas of the Mississippi bands of August 2, 1845, shall be paid to the chief, Hole-in-the-day, and to his heirs, and there shall be set apart, by selections to be made 27 in their behalf and reported to the Interior Department by the agent, one-half section of land each upon the Gulf Lake reservation for Min-e-ge-shig and Truman A. Warren, who shall be entitled to patents for the same upon such selections being reported to the department.

Article 6. Upon the ratification of this treaty the Secretary of the Interior shall designate one or more persons who shall, in connection with the agent for the Chippewas in Minnesota, and such of their chiefs, parties to this agreement, as he may deem sufficient, proceed to locate, as near as may be, the reservation set apart by the second article hereof, and designate the places where improvements shall be made, and such portion of the improvements provided for in the fourth article of the Chippewa treaty of May 7, 1864, as

the agent may deem necessary and proper, with the approval of the Commissioner of Indian Affairs, may be made upon the new reservation, and the United States will pay the expenses of negotiating this treaty not to exceed ten thousand dollars.

Article 7. As soon as the location of the reservation set apart by the second article hereof shall have been approximately ascertained and reported to the office of Indian Affairs, the Secretary of the Interior shall cause the same to be surveyed in conformity to the system of Government surveys, and whenever, after such survey, any Indian of the bands parties hereto, either male or female, shall have ten acres of land under cultivation, such Indian shall be entitled to receive a certificate, showing him to be entitled to the forty acres of land, according to legal subdivision, containing the said ten acres, or the greater part thereof, and whenever such Indian shall have an additional ten acres under cultivation, he or she shall be entitled to a certificate for additional forty acres, and so on, until the full amount of one hundred and sixty acres may have been certified to any one Indian; and the land so held by any Indian shall be exempt from taxation and sale for debt and shall not be 28 alienated except with the approval of the Secretary of the Interior, and in no case to any person not a member of the Chippewa tribe.

Article 8. For the purpose of protecting and encouraging the Indians, parties to this treaty, in their efforts to become self-sustaining by means of agriculture, and the adoption of the habits of civilized life, it is hereby agreed that, in case of the commission by any of the Indians of crimes against life or property, the person charged with such crimes may be arrested, upon the demand of the agent, by the sheriff of the county of Minnesota in which said reservation may be located, and when so arrested may be tried, and if convicted, punished in the same manner as if he were not a member of an Indian tribe.

In testimony whereof, the parties aforementioned, respectively representing the United States and the said Chippewas of the Mississippi, have hereunto set their hands and seals the day and year first above written.

Ratified April 8, 1867.

Proclaimed April 18, 1867.

Your orators further state that the United States has carried out and performed all the obligations assumed by it under the terms of said treaty, and has fully performed the same on its part, and they submit that, under the terms and provisions of said treaty proclaimed on the 20th day of March, 1865, the lands now within the limits of the said city of Bemidji and adjacent thereto, became absolutely the lands of the Mississippi Band of Chippewa Indians; that said lands were afterward again ceded to the United States, under the provisions of the treaty proclaimed April 18th, 1867, which cessation was made without any restrictions or limitations whatever, and without

any provisions relative to the introduction of intoxicating liquors into or sale thereof in such territory; and that by reason thereof, and of the premises since the making of the said treaty of 1867, as aforesaid, the provisions of sections 2139 and 2140 of the United States statutes and amendments thereof, are not operative within said territory

whereon stands the said city of Bemidji, and the same is not
29 Indian country within the meaning of said sections, and that said defendants, in attempting to prevent these complainants from further continuing their business hereinbefore referred to are, and each of them is, acting without authority.

And your orators further allege that in and by an act of Congress entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1899, the President was authorized and directed to appoint three commissioners to negotiate with the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment of all their title and interest in and to all their reservations in said State, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said commissioners was not required to make the allotments provided for by said act. And it was further provided in and by said act that the acceptance and approval of the cession and relinquishment provided for therein by the President should operate as a complete extinguishment of the Indian title without any further act or ceremony whatsoever for the purposes and upon the terms provided in said act.

And your orators further aver that pursuant to the provisions of the said act the President duly appointed three commissioners to negotiate with the said band of Chippewa Indians for the cession and relinquishment of their said reservations, and that at divers times between the 8th day of July and the 12th day of November, 1889, agreements were entered into between said commissioners, on the part of the United States, and the several bands of Chippewa Indians, wherein and whereby the said Indians accepted, consented to, and ratified the said act of February 14, 1889, and each and all of the provisions thereof, and granted, ceded, relinquished, and conveyed to the United States all their right, title, and interest in and to all of the Grand Portage, Fond du Lac, Nett Lake, Deer Creek, Leech Lake, Winnibigoshish, and Chippewa Reservations, and in like manner ceded, relinquished, and conveyed to the United States all their right, title, and interest in and to four townships of the White Earth Reservation and the greater part of the Red Lake Reservation, and that said agreements and cessions were duly approved by the President on the 4th day of March, 1890.

30 And your orator further shows that upon the approval of the agreements and cessions above mentioned by the President the Indian title in and to all the lands thereby ceded was absolutely and completely extinguished, without any condition or limitation whatsoever, save only that the said lands were subject to disposal in

the manner and for the purposes provided in said act and not otherwise.

Your orators further say that at the time of the making of the treaty of 1855, hereinbefore referred to, the lands ceded by the Chippewa Indians under said treaty then were and constituted a vast wilderness, altogether uninhabited by any civilized people; that since the making of said treaty and the acquisition of the territory therein ceded within the limits of the State of Minnesota the country so ceded, with the exception of segregated portions thereof included within the reservations retained by the Indians under treaties between said Indians and the United States, has been largely developed, gradually at first, but with phenomenal rapidity within the last fifteen years, and with the exception of portions of such territory now included within the Red Lake and White Earth Reserves all of said lands have become populated with white and civilized people, and excepting such reservations, and all such territory has been opened up to settlement, and with the exception of a few square miles of land remote from railroads and streams all such territory is organized into political subdivisions under such organized form of government as is prescribed by the laws of the State of Minnesota, and in various communities scattered over said territory, except in very remote portions thereof, the degree of civilization is as advanced as in older portions of said State, and in the larger portion of said territory various branches of industry have been established and commercial interests have grown up and the circumstances existing at the time of the making of said treaty of 1855 have materially and completely changed; that according to the returns of the United States census of 1910 there is now in the counties affected by said treaty of 1855 a total white population of 382,191.

And your orators further say and represent that a large strip of territory completely surrounding the said Red Lake Reservation, the said strip of land being a part of the Red Lake Reservation ceded to the United States during the year 1890 under and pursuant to the

provisions of the act of Congress of January 14, 1899, as hereinbefore stated, is now, and is admitted by the officials of the

United States Government to be, exempt from the provisions of any treaty relative to the introduction of intoxicating liquors into "the Indian country," and that the sale of intoxicating liquor in the territory between the said Red Lake Reservation and the said city of Bemidji and the territory immediately surrounding the same is permitted by the United States Government, and there is and exists a strip of land about fifteen miles in width into which it is lawful and so admitted by the Interior Department of the United States to introduce intoxicating liquors, and that in order to reach the said city of Bemidji it is necessary for such Indians as reside in said Red Lake Reservation to cross over the said strip of territory so open and recognized to be open to the sale and traffic of intoxicating liquors.

And may it please your honors to grant unto your orators a writ of subpoena of the United States of America issuing out of and

under the seal of this honorable court, directed to the said defendants W. E. Johnson, T. E. Brents, and H. F. Coggeshall, and thereby commanding them, and each of them, on a certain day to be therein named, and under a certain penalty to be and appear before this honorable court and then and there to answer, but not under oath—such oath being expressly waived—all and singular, and that each stand to perform and abide by such order, direction, and decree as may be made against them in the premises and as shall seem to your honors to be meet and agreeable to equity and good conscience.

And your orators pray that a temporary injunction may issue against the said defendants W. E. Johnson, T. E. Brents, and H. F. Coggeshall enjoining and restraining them, and each of them, and each of their agents, servants, employees, and deputies, and all persons claiming to act by, through, and under them, from going upon the respective premises of the said several complainants, particularly described herein, and from molesting or interfering with them, or

either of them, in the conduct of their business as saloon-
32 keepers, or in conducting bars and in selling and disposing of

vinous, spirituous, malt, and other intoxicating liquors, while engaged in said business, and in conducting the same with persons having no Indian blood, and under the pretense and claim that it is unlawful to sell and dispose of said liquors in the territory embraced within the limits of the said city of Bemidji, and from taking into their possession, or molesting, or interfering with, seizing or destroying any of the stock or stocks on hand, or in the possession of either of said complainants, or any of the personal property of said complainants used in connection with such business, either now situated upon said premises, or which complainants may hereafter acquire, place, or keep within any building on either of said premises.

May it please your honors to grant unto your orators a writ, or writs, of injunction, issuing out of your honorable court, or issued by one of your honors, according to the ordinary course and practice of this court in such cases made and provided, directing, commanding, enjoining, and restraining said defendants, their agents, servants, deputies, and all persons claiming to act for, thru, or under them, and each and every person whomsoever, from going upon the respective premises of said complainants particularly described herein, or to which they may remove in the said city, and from molesting or interfering with them, or either of them, in the conduct of their business as saloon keepers, or in conducting bars, and in selling and disposing of vinous, spirituous, malt, and other intoxicating liquors, while engaged in said business, and in conducting the same with persons having no Indian blood, and under the pretense and claim that it is unlawful to sell and dispose of said liquors in the territory embraced within the limits of the said city of Bemidji, and from taking into their possession, or molesting, or interfering with, seizing, or destroying any of the stock or stock on hand, or in the possession of either of the said complainants, or any of the per-

sonal property of said complainants used in connection with such business, whether as now situated upon said premises, or
 33 which complainants may hereafter acquire, place, or keep within any building on either of said premises.

And your orators further pray that until said temporary injunction shall issue, your honors may issue a temporary restraining order against said defendants, and each of them, and their agents, servants, deputies, and all persons claiming to act, or acting for, thru, or under them, and in form and to the effect above prayed for; and may it please your honors to grant unto your orators such other and further relief as the facts and circumstances of the case warrant and require, and to this honorable court shall seem meet, and your orators, as in duty bound, will ever pray.

SPOONER & BROWN & E. E. McDONALD,
Solicitors for Complainants.

34 STATE OF MINNESOTA, }
 COUNTY OF BELTRAMI. } ss.

Edwin Gearlds and John A. Dalton, being each duly sworn according to law, severally depose and say: I am one of the complainants mentioned in the foregoing bill and have read the same, and the same is true of my own knowledge, except such matters as are therein stated on information and belief, and as to such matters I believe it to be true.

JOHN A. DALTON.
 EDWIN GEARLDS.

Subscribed and sworn to before me this 19th day of December, 1910.

[SEAL.]

E. E. McDONALD,
Notary Public, Beltrami County, Minnesota.

My commission expires May 16th, 1917.
 (Indorsed:) Filed Jan. 9, 1911.

35 And on the same day the following demurrer was filed of record in said cause, to wit:

36 In the Circuit Court of the United States, District of Minnesota, Fourth Division.

EDWIN GEARLDS ET AL., COMPLAINANTS, }
 v. }
 W. E. JOHNSON ET AL., DEFENDANTS. }

The joint and several demurrer of the above named defendants to the bill of complaint of the above named complainants.

These defendants, by protestation, not confessing or acknowledging any or all of the matters or things in said bill of complaint con-

tained to be true in such manner and form as the same are thereon set forth and alleged, demur to said bill, and for cause of demurrer show:

I. That it appears by the complainants' own showing by the said bill that they are not entitled to the relief prayed for by said bill against these defendants.

II. That it appears from said bill of complaint that this court has no jurisdiction to hear and determine this action.

III. That said bill of complaint is wholly without equity.

Wherefore, and for divers other good causes of demurrer appearing in said bill, these defendants demur thereto and humbly pray the judgment of this honorable court whether they shall be compelled to make further or any answer to said bill, and they humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

37

CHARLES C. HOUFT,

CHARLES C. HOFFMANN,
United States Attorney and Solicitor for Defendants.

STATE OF MINNESOTA, }
COUNTY OF RAMSEY. } 88:

Charles C. Houpt, being first duly sworn, on his oath says that he is solicitor for defendants in the above entitled action, and that in his opinion the foregoing demurrer is well founded in point of law, and on behalf of defendants, says that same is not interposed for delay.

CHARLES C. HOUPT.

Subscribed and sworn to before me this 9th day of January, 1910.

NORBERT B. TYRRELL,
Notary Public, Ramsey County, Minn.

My commission expires Oct. 5, 1917.
(Seal.)

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

CHARLES C. HOUPt,
United States Attorney and Solicitor for Defendants.

(Endorsed:) Filed Jan. 9th, 1911. Henry D. Lang, clerk, by Louise B. Trott, deputy.

38 And on the same day the following order overruling de-
murrer was entered of record in said cause, to-wit:

39 United States Circuit Court for the District of Minnesota.
Third Division. Term minutes, December term, A. D. 1910.
January 9th, 1911.

Monday morning, court opened pursuant to adjournment.

Present: Hon. Charles A. Willard, judge; Henry D. Lang, clerk, by Louise B. Trott, deputy.

EDWIN GEARLDS, ET AL.,
vs.
W. E. JOHNSON, ET AL. } No. 1007. Fourth Division.

This cause coming on to be heard upon the joint and several demurrer of the defendants to the amended bill of complaint of the complainant, the complainants appear by their solicitors, Messrs. M. A. Spooner and E. E. McDonald and Alfred H. Bright; the defendants by Charles C. Houpt, Esq.,

Whereupon, after hearing the arguments and statements of the solicitors for the respective parties, and being fully advised in the premises, upon due consideration thereof, it is by the court

Ordered: That the demurrer of the defendants to the amended bill of complaint herein be, and the same hereby is, overruled, and that a temporary injunction be granted, the defendant's counsel being allowed an exception to these orders.

A true record.

Attest:

HENRY D. LANG, Clerk,
By LOUISE B. TROT, Deputy.

40 And on January 13th, 1911, the following oral opinion of the court overruling the demurrer and granting a temporary injunction was filed of record in said cause, to-wit:

41 United States Circuit Court, District of Minnesota, Fourth Division.

EDWIN GEARLDS, J. J. KRAMER, FRED E. BRINK-
man, E. E. Gearlds, Albert Karshik, John A.
Dalton, Edwin S. Fay, F. S. Lycan, John H.
Sullivan, Harry Gunsalus, J. E. Maloy, and
Tillie Larson, complainants,

In equity. No. 1007.

vs.
W. E. JOHNSON, T. E. BRENTS, AND H. F. COG-
geshall, defendants.

*Demurrer to bill of complaint and motion for preliminary injunction,
January 9th, 1911.*

WILLARD, J. (orally).

Congress from time to time has passed various laws prohibiting the introduction of liquor into the Indian country. Among those is the act of 1834, the act of 1864, the act of 1892, and the act of 1897, and

the question at the bottom of this case is, of course, whether the United States Government can prohibit the introduction of intoxicating liquors into land covered by the treaty of 1855. If the 42 case depended alone upon these various acts of Congress, and particularly upon the last act, then no power could be found in the Government for the purpose of prohibiting such introduction.

In the case of *Dick v. U. S.*, 208 U. S., 340, the court said, on page 352:

"If this case depended alone upon the Federal liquor statute forbidding the introduction of intoxicating drinks into the Indian country, we should feel obliged to adjudge that the trial court erred in not directing a verdict for the defendant; for that statute, when enacted, did not intend by the words "Indian country" to embrace any body of territory in which, at the time, the Indian title had been extinguished, and over which and over the inhabitants of which (as was the case of Culdesac) the jurisdiction of the State, for all purposes of government, was full and complete."

The situation at Bemidji is the same as it was at Culdesac; it is not within the Indian country and consequently the statute alone would not justify any prosecution for the introduction of liquor into that country. The power of the Government must rest, as it rested in the case of *Dick v. The U. S.*, upon a treaty; and the treaty invoked is the treaty with the Chippewa Indians of 1855, which is in the 10th Statutes at Large, 1165. Article 7 of that treaty is as follows:

"Article VII. The laws which have been or may be enacted by Congress, regulating trade and intercourse with the Indian tribes, to continue and be in force within and upon the several reservations provided for herein; and those portions of said laws which prohibit the introduction, manufacture, use of, and traffic in ardent spirits, wines, or other liquors in the Indian country, shall continue and be in force, within the entire boundaries of the country herein ceded to the United States, until otherwise provided by Congress."

The first and most important case to be considered is the U. S. v. 43 Gallons of Whiskey, 93 U. S., 188. That case involved a treaty made with the Chippewa Indians in 1863 by which they ceded certain lands in Minnesota to the United States. It contained a clause similar to Article 7 of the treaty of 1855. The court said there, at page 194:

"It was contended, among other things, that the sale of liquor to an Indian, or any other person within the county, was a matter of State regulation, with which Congress had nothing to do. But this court held that the power to regulate commerce with the Indian tribes was, in its nature, general, and not confined to any locality; that its existence necessarily implied the right to exercise it, whenever there was a subject to act upon, although within the limits of a

State, and that it extended to the regulation of commerce with the individual members of such tribes."

The court further said at page 195:

"As long as these Indians remain a distinct people, with an existing tribal organization, recognized by the political department of the Government, Congress has the power to say with whom, and on what terms, they shall deal, and what articles shall be contraband. If liquor is injurious to them inside of a reservation, it is equally so outside of it; and why can not Congress forbid its introduction into a place near by, which they would be likely to frequent?"

And at page 196:

"The power to define originally the "Indian country" within which the unlicensed introduction and sale of liquors were prohibited, necessarily includes that of enlarging the prohibited boundaries, whenever, in the opinion of Congress, the interests of Indian intercourse and trade will be best subserved."

And finally at page 198:

"If this result can be thus obtained, surely the Federal Government may, in the exercise of its acknowledged power to treat with Indians, make the provision in question, coming, as it fairly does, within the clause relating to the regulation of commerce."

This case has been referred to in subsequent decisions.

In the case of *Dick v. The U. S.*, before mentioned, there 44 was under consideration a treaty with the Indians which prohibited for the period of 25 years the introduction of intoxicating liquor into lands then ceded by them. The court in delivering the opinion repeatedly referred to that circumstance, and seemed to indicate that the period of prohibition was important. In speaking of the case of *U. S. v. 43 Gallons of Whiskey*, the court said at page 359:

"In view of some contentions of counsel and of certain general observations in the case of *Forty three Gallons of Whiskey*, above cited, not necessary to the decision of that case, but upon which some stress has been laid, it is well to add that we do not mean, by anything now said, to indicate what, in our judgment, is the full scope of the treaty-making power of Congress nor how far, if at all, a treaty may permanently displace valid State laws or regulations."

The latest case to which my attention has been called is *U. S. v. Sutton*, 215 U. S., 291. There a prosecution for the introduction of liquor into Indian country was upheld; but it appeared that the "Indian country" there in question was a tract of land which had been allotted to an Indian, the title to which was still held in trust for him by the United States.

It may be argued that the authority of the case of *U. S. v. 43 Gallons of Whisky* has been somewhat qualified by what was said in the case of *Dick v. U. S.*, and by the fact that the case of *U. S. v. Sutton* supra was put upon somewhat different grounds. It was nevertheless in the first case distinctly held that Congress had the

power not only to prohibit the introduction of liquor into an Indian reservation, into what was in fact Indian country, but also 45 to prohibit the introduction of liquor into adjoining country, not Indian country, but within the limits of an organized State. So far as this court is concerned, that statement must be considered as binding upon it. The law must be considered as settled that Congress has the power to prohibit the introduction of liquor into lands not Indian country, but adjoining it, within the limits of a State.

But when this is admitted and conceded the present case is not yet, in my judgment, resolved. The question here presented is not a question as to the power of Congress. As I have already said, it is within the power of Congress, after a State has been admitted to the Union, to prohibit the introduction of liquor into not only Indian country but into the adjoining country. That it had that power before the State was admitted and while the land was within the limits of a territory is unquestioned. At the time when the treaty of 1855 was negotiated the Government had undoubtedly the power to insert in that treaty the provisions therein contained.

So it is not at all a question of power, but it is a question whether that provision in the treaty of 1855 is still in force or whether any subsequent act of Congress has modified or repealed it. Such questions are decided neither by the U. S. v. 43 Gallons of Whiskey nor by Dick vs. U. S. In each of those cases the treaty under consideration was made after the State had been admitted to the Union.

These questions can only be answered by reference to the proceedings which took place when the State of Minnesota was admitted to the Union, and by reference to the authorities.

46 The enabling act was passed on the 26th of February, 1857, 11 St. at L. 166. It provided in section 5 as follows:

“Provided, the foregoing propositions herein offered are on the condition, that the said convention which shall form the constitution of said State shall provide, by a clause in said constitution, or an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same, by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof; and that no tax shall be imposed on lands belonging to the United States, and that in no case shall nonresident proprietors be taxed higher than residents.”

These were the only agreements which Congress imposed as a condition for the entrance of Minnesota into the Union. There is nothing whatever said in the enabling act with reference to Indians. There is nothing said in it with reference to this treaty of 1855 or with reference to any other treaty. Nothing was inserted therein requiring the State in its constitution to recognize the treaty of 1855 or any other treaty, or as to the rights of the Indians to any lands within the boundaries of the State. When the constitution was adopted it contained no such recognition and Indians are mentioned

in only two places therein. By article 7, section 1, they are given the right to vote under certain circumstances. By article 15, section 2, it is provided as follows:

“Residents on Indian lands.”—Persons residing on Indian lands within the State shall enjoy all the rights and privileges of citizens, as though they lived in any other portion of the State, and shall be subject to taxation.”

It will be noticed that that section uses the word “persons”; it does not say white persons or Indians; and just what effect 47 should be given to it I shall not take time to consider. It is sufficient to say that it certainly in no way limits the rights of the State.

The act admitting the State of Minnesota into the Union was passed May 11th, 1858. That act provided in its first section:

“That the State of Minnesota shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.”

Section 3 provided in part:

“That from and after the admission of the State of Minnesota, as hereinbefore provided, all the laws of the United States which are not locally inapplicable shall have the same force and effect within that State as in other States of the Union.”

The act contained nothing which in any way limited the powers of the State.

As I said before, the question is, what effect, if any, did the act admitting the State into the Union have upon the treaty of 1855; did it repeal it, or did it modify it? When I say repeal, I do not mean did it repeal all of the treaty; but did it repeal that part of article 7 which prohibited the introduction of liquor into ceded lands? I do not understand that it is claimed that the act had the effect of repealing that part of article 7 which related to the lands reserved and set apart by that treaty for the Indians. I do not understand that it is claimed that the provisions of the treaty were not in full force with regard to what was Indian country after the treaty; and no such claim can be successfully maintained, because the United

48 States had the same jurisdiction over the reservations set apart in that treaty as it had over reservations in any other State of the Union. Whether that jurisdiction is based upon the commerce clause in the Constitution, whether it is based upon the peculiar relations of the United States to the Indians, or whether it is based upon that provision of the Constitution which gives to the United States the power to make all needful rules and regulations respecting the Territories and other property of the United States, it is not necessary to determine. That such power exists is unquestioned.

U. S. v. Kagama, 118 U. S., 375.

The question in the case is whether the act admitting Minnesota into the Union repealed that part of article 7 of the treaty of 1855

which prohibited the introduction of ardent spirits into the ceded lands. That question must be determined by the authorities.

Upon the power of Congress with reference to existing treaties the Cherokee Tobacco case, 11 Wall., 616, is important.

The court said, on page 617:

"The proceeding was instituted by the defendants in error to procure the condemnation and forfeiture of the tobacco in question, and of the other property described in the libel of information, for alleged violations, which are fully set forth, of the revenue laws of the United States."

The court said, at page 618:

"The only question argued in this court, and upon which our decision must depend, is the effect to be given respectively to the 107th section of the act of 1868, and the 10th article of the treaty of 1866, between the United States and the Cherokee Nation of Indians.

"They are as follows:

49 "Section 107. That the internal-revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars, shall be construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same shall be within a collection district or not."

"Article 10th. Every Cherokee Indian and freed person residing in the Cherokee Nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory."

"On behalf of the claimants it is contended that the 107th section was not intended to apply and does not apply to the country of the Cherokees, and that the immunities secured by the treaty are in full force there. The United States insist that the section applies with the same effect to the Territory in question as to any State or other Territory of the United States, and that to the extent of the provisions of the section the treaty is annulled."

And further at page 620:

"But conceding these views to be correct, it is insisted that the section can not apply to the Cherokee Nation, because it is in conflict with the treaty. Undoubtedly one or the other must yield. The repugnancy is clear and they can not stand together.

"The second section of the fourth article of the Constitution of the United States declares that 'this Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties which shall be made under the authority of the United States, shall be the supreme law of the land.'

"It need hardly be said that a treaty can not change the Constitution or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our Government. The effect of treaties and acts of Congress, when in conflict, is

not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty. In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, can not be more obligatory. They have no higher sanctity; and no greater inviolability or immunity from 50 legislative invasion can be claimed for them. The consequences in all such cases give rise to questions which must be met by the political department of the Government. They are beyond the sphere of judicial cognizance. In the case under consideration the act of Congress must prevail as if the treaty were not an element to be considered. If a wrong has been done the power of redress is with Congress, not with the judiciary, and that body, upon being applied to, it is to be presumed, will promptly give the proper relief."

Going back to the case of the *United States v. 43 Gallons of Whiskey*, it was there declared to be the law, and is now the law, that Congress can prevent the introduction of intoxicating liquor onto lands adjacent to either one of these reservations. If it is held by the courts that the act admitting Minnesota into the Union repealed this provision of the treaty of 1855, it is within the power of Congress to re-enact it. If it is believed by Congress that that provision has always been in force and is still in force, it will be very easy for it to correct any judicial decision to the contrary.

In the case of *U. S. v. McBratney*, 104 U. S., 621, the question certified to the Supreme Court of the United States was "whether the Circuit Court of the United States sitting in and for the district of Colorado has jurisdiction of the crime of murder, committed by a white man upon a white man, within the Ute Reservation in said district, and within the geographical limits of the State of Colorado."

The court said, at page 623:

"By the first section of the act of Congress of Feb. 28, 1861, c. 59, to provide a temporary government for the Territory of Colorado, all territory which, by treaty with any Indian tribe, was not, without its consent, to be included within the territorial limits or 51 jurisdiction of any State or Territory, was excepted out of the boundaries and constituted no part of the Territory of Colorado; and by the sixteenth section, 'the Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within the said Territory of Colorado as elsewhere within the United States.' 12 Stat., 172, 176. If this provision of the section had remained in force after Colorado became a State, this indictment might doubtless have been maintained in the Circuit Court of the United States. *United States vs. Rogers*, 4 How., 567;

Bates v. Clark, 95 U. S., 204; United States vs. Ward, 1 Woolw., 17, 21.

"But the act of Congress of March 3, 1875, c. 139, for the admission of Colorado into the Union, authorized the inhabitants of the Territory 'to form for themselves out of said Territory a State Government, with the name of the State of Colorado; which State, when formed, shall be admitted into the Union upon an equal footing with the original States in all respects whatsoever;' and the act contains no exception of the Ute Reservation, or of jurisdiction over it. 18 Stat., pt. 3, p. 474. The provision of section one of the subsequent act of June 26, 1876, c. 147 (19 Stat., 61), that upon the admission of the State of Colorado into the Union 'the laws of the United States, not locally inapplicable, shall have the same force and effect within the State as elsewhere within the United States,' does not create any such exception. Such a provision has a less extensive effect within the limits of one of the States of the Union than in one of the Territories of which the United States have sole and exclusive jurisdiction.

"The act of March 3, 1875, necessarily repeals the provisions of any prior statute, or of any existing treaty, which are clearly inconsistent therewith. The Cherokee Tobacco, 11 Wall., 616. Whenever, upon the admission of a State into the Union, Congress has intended to except out of it an Indian reservation, or the sole and exclusive jurisdiction over that reservation, it has done so by express words. The Kansas Indians, 5 Wall., 737; United States v. Ward, *supra*. The State of Colorado, by its admission into the Union by Congress, upon an equal footing with the original States in all respects whatever, without any such exception as had been made in the treaty with the Ute Indians and in the act establishing Territorial government, has acquired criminal jurisdiction over its own citizens and other white persons throughout the whole of the territory within its limits, including the Ute Reservation, and that reservation is no longer within the sole and exclusive jurisdiction of the United States."

52 So in the case of Minnesota, the United States Government, when it was admitted into the Union did not see fit to make any exception or reservation with regard to lands occupied by Indians or lands which the Indians had previously ceded.

In the case of Draper v. U. S., 164 U. S., 240, the court said, at page 242:

"The Territory of Montana was organized by the act of May 26, 1864, c. 95, 13 Stat., 85. Subsequently, in 1868, the Crow Indian Reservation was created, 15 Stat., 649, the land of which it was composed being wholly situated within the geographical boundaries of the Territory of Montana. The treaty creating this reservation contained no stipulation restricting the power of the United States to include the land, embraced within the reservation, in any State or Territory then existing or which might thereafter be created. The law to enable Montana and other States to be admitted into the Union

was passed February 22, 1889, 25 Stat., 676, c. 180. This act embraced the usual provisions for a convention to frame a constitution, for the adoption of an ordinance directed to contain certain specified agreements, and provided that, upon the compliance with the ordained requirements, and the proclamation of the President so announcing, the State should be admitted on an equal footing with the original States. The question then is, has the State of Montana jurisdiction over offences committed within its geographical boundaries by persons not Indians or against Indians, or did the enabling act deprive the courts of the State of such jurisdiction of all offences committed on the Crow Indian Reservation, thereby divesting the State *pro tanto* of equal authority and jurisdiction over its citizens, usually enjoyed by the other States of the Union?"

After a statement of the case of *U. S. v. McBratney* the court said, on page 243:

"United States *v. McBratney* is therefore decisive of the question now before us, unless the enabling act of the State of Montana contained provisions taking that State out of the general rule and depriving its courts of the jurisdiction to them belonging and resulting from the very nature of the equality conferred on the State by virtue of its admission into the Union. Such exception is sought here to be evolved from certain provisions of the enabling act 53 of Montana which were ratified by an ordinance of the convention which framed the constitution of that State."

The section relied upon provided in substance that the Indian lands within the State should remain under the absolute jurisdiction and control of the United States. Notwithstanding that provision the court held that the courts of the State had jurisdiction over the offence which was being prosecuted.

In the case of *Ward v. Race Horse*, 163 U. S., 504, article 4, of the treaty made on the 24th of February, 1869, with the Bannock Tribe of Indians provided as follows:

"The Indians herein named agree, when the agency house and other buildings shall be constructed on their reservations named, they will make said reservations their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right to hunt upon the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts."

The case says at page 505:

"In July, 1868, an act had been passed erecting a temporary government for the Territory of Wyoming, 15 Stat., 178, c. 235, and in this act it was provided as follows:

"That nothing in this act shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty, between the United States and such Indians."

"Wyoming was admitted into the Union on July 10, 1890, 26 Stat., 222, c. 664. Section 1 of that act provides as follows:

"That the State of Wyoming is hereby declared to be a State of the United States of America, and is hereby declared admitted into the Union on an equal footing with the original States in all respects whatever; and that the constitution which the people of Wyoming have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed."

54 "The act contains no exception or reservation in favor of or for the benefit of Indians.

"The legislature of Wyoming on July 20, 1895 (Laws of Wyoming, 1895, c. 98, p. 225), passed an act regulating the killing of game within the State. In October, 1895, the district attorney of Uinta County, State of Wyoming, filed an information against the appellee (Race Horse) for having killed in that county seven elk in violation of the law of the State. He was taken into custody by the sheriff, and it was to obtain a release from imprisonment authorized by a commitment issued under these proceedings that the writ of *habeas corpus* was sued out. The following facts are unquestioned: 1st. That the elk were killed in Uinta County, Wyoming, at a point about one hundred miles from the Fort Hall Indian Reservation, which is situated in the State of Idaho; 2d, that the killing was in violation of the laws of the State of Wyoming; 3d, that the place where the killing took place was unoccupied public land of the United States, in the sense that the United States was the owner of the fee of the land; 4th, that the place where the elk were killed was in a mountainous region some distance removed from settlements, but was used by the settlers as a range for cattle, and was within election and school districts of the State of Wyoming."

The opinion of the court was delivered by Chief Justice, then Justice, White, who said, at page 510:

"The argument, now advanced, in favor of the continued existence of the right to hunt over the land mentioned in the treaty, after it had become subject to State authority, admits that the privilege would cease by the mere fact that the United States disposed of its title to any of the land, although such disposition, when made to an individual, would give him no authority over game, and yet that the privilege continued when the United States had called into being a sovereign State, a necessary incident of whose authority was the complete power to regulate the killing of game within its borders. This argument indicates at once the conflict between the right to hunt in the unoccupied lands, within the hunting districts, and the assertion of the power to continue the exercise of the privilege in question in the State of Wyoming in defiance of its laws. That 'a treaty may supersede a prior act of Congress, and an act of Congress supersede a prior treaty,' is elementary. *Fong Yue Ting v. United States*, 149 U. S., 698; *The Cherokee Tobacco*, 11 Wall., 616. In the last case it was held that a law of Congress imposing a tax on tobacco, if in conflict with a prior treaty with the Cherokees, was

55 paramount to the treaty. Of course the settled rule undoubtedly is that repeals by implication are not favored, and will

not be held to exist if there be any other reasonable construction. *Cope v. Cope*, 137 U. S., 682, and authorities there cited. But in ascertaining whether both statutes can be maintained it is not to be considered that any possible theory, by which both can be enforced, must be adopted, but only that repeal by implication must be held not to have taken place if there be a reasonable construction, by which both laws can coexist consistently with the intention of Congress. *United States v. Sixty-seven Packages Dry Goods*, 17 How., 85; *District of Columbia v. Hutton*, 143 U. S., 18; *Frost v. Wenie*, 157 U. S., 46. The act which admitted Wyoming into the Union, as we have said, expressly declared that State should have all the powers of the other States of the Union, and made no reservation whatever in favor of the Indians. These provisions alone considered would be in conflict with the treaty if it was so construed as to allow the Indians to seek out every unoccupied piece of Government land and thereon disregard and violate the State law, passed in the undoubted exercise of its municipal authority. But the language of the act admitting Wyoming into the Union, which recognized her coequal rights, was merely declaratory of the general rule.

"In *Pollard v. Hagan*, 3 How., 212 (1845), the controversy was as to the validity of a patent from the United States to lands situate in Alabama, which at the date of the formation of that State were part of the shore of the Mobile River between high and low water mark. It was held that the shores of navigable waters and the soil under them were not granted by the Constitution to the United States, and hence the jurisdiction exercised thereover by the Federal Government, before the formation of the new State, was held temporarily in trust for the new State, to be thereafter created, and that such State, when created by virtue of its being, possessed the same rights and jurisdiction as had the original States. And, replying to an argument based upon the assumption that the United States had acquired the whole of Alabama from Spain, the court observed that the United States would then have held it subject to the Constitution and laws of its own Government. The court declared, p. 229, that to refuse to concede to Alabama sovereignty and jurisdiction over all the territory within her limits would be to 'deny that Alabama has been admitted into the Union on an equal footing with the original States.' The same principles were applied in *Louisiana v. First Municipality*, 3 How., 589.

"In *Withers v. Buckley*, 20 How., 84 (1857), it was held
56 that a statute of Mississippi creating commissioners for a river
within the State, and prescribing their powers and duties, was
within the legitimate and essential powers of the State. In answer
to the contention that the statute conflicted with the act of Congress,
which authorized the people of Mississippi Territory to form a con-
stitution, in that it was inconsistent with the provision in the act that
'the navigable rivers and waters leading into the same shall be com-
mon highways and forever free, as well to the inhabitants of the

State of Mississippi as to other citizens of the United States,' the court said (p. 92) :

"In considering this act of Congress of March 1, 1817, it is unnecessary to institute any examination or criticism as to its legitimate meaning, or operation, or binding authority, farther than to affirm that it could have no effect to restrict the new State in any of its necessary attributes as an independent sovereign government, not to inhibit or diminish its perfect equality with the other members of the confederacy with which it was to be associated. These conclusions follow from the very nature and objects of the confederacy, from the language of the Constitution adopted by the States, and from the rule of interpretation pronounced by this court in the case of *Pollard's Lessee v. Hagan*, 3 How., 223.'

"A like ruling was made in *Escanaba Company v. Chicago*, 107 U. S., 678 (1882), where provisions of the ordinance of 1787 were claimed to operate to deprive the State of Illinois of the power to authorize the construction of bridges over navigable rivers within the State. The court, through Mr. Justice Field, said (p. 683) :

"But the States have full power to regulate within their limits matters of internal police, including in that general designation whatever will promote the peace, comfort, convenience, and prosperity of their people.'

"And it was further added (p. 688) :

"Whatever the limitation upon her powers as a government whilst in a Territorial condition, whether from the ordinance of 1787 or the legislation of Congress, it ceased to have any operative force, except as voluntarily adopted by her, after she became a State of the Union. On her admission she at once became entitled to and possessed of all the rights of dominion and sovereignty which belonged to the original States. She was admitted, and could be admitted, only on the same footing with them * * *. Equality of the Constitutional right and power is the condition of all the States of the Union, old and new.'

57 "In *Cardwell v. American Bridge Company*, 113 U. S., 205 (1884), *Escanaba Company v. Chicago*, *supra*, was followed, and it was held that a clause in the act admitting California into the Union, which provided that the navigable waters within the State shall be free to citizens of the United States, in no way impaired the power which the State could exercise over the subject if the clause in question had no existence. Mr. Justice Field concluded the opinion of the court as follows (p. 212) :

"The act admitting California declares that she is "admitted into the Union on an equal footing with the original States in all respects whatever." She was not, therefore, shorn by the clause as to navigable waters within her limits of any of the powers which the original States possessed over such waters within their limits.'

"A like conclusion was applied in the case of *Willamette Iron Bridge Co. vs. Hatch*, 125 U. S., 1, where the act admitting the State of Oregon into the Union was construed.

"Determining by the light of these principles, the question whether the provision of the treaty giving the right to hunt on unoccupied lands of the United States in the hunting districts is repealed, in so far as the lands in such districts are now embraced within the limits of the State of Wyoming, it becomes plain that the repeal results from the conflict between the treaty and the act admitting that State into the Union. The two facts, the privilege conferred and the act of admission, are irreconcilable in the sense that the two under no reasonable hypothesis can be construed as coexisting.

"The power of all the States to regulate the killing of game within their borders will not be gainsaid, yet, if the treaty applies to the unoccupied land of the United States in the State of Wyoming, that State would be bereft of such power, since every isolated piece of land belonging to the United States as a private owner, so long as it continued to be unoccupied land, would be exempt in this regard from the authority of the State. Wyoming, then, will have been admitted into the Union, not as an equal member, but as one shorn of a legislative power vested in all the other States of the Union, a power resulting from the fact of statehood and incident to its plenary existence. Nor need we stop to consider the argument advanced at bar, that as the United States, under the authority delegated to it by the Constitution in relation to Indian tribes, has a right to deal with that subject, therefore it has the power to exempt from the operation

58 of State game laws each particular piece of land, owned

by it in private ownership within a State, for nothing in this case shows that this power has been exerted by Congress. The enabling act declares that the State of Wyoming is admitted on equal terms with the other States, and this declaration, which is simply an expression of the general rule, which presupposes that States, when admitted into the Union, are endowed with powers and attributes equal in scope to those enjoyed by the States already admitted, repels any presumption that in this particular case Congress intended to admit the State of Wyoming with diminished governmental authority. The silence of the act admitting Wyoming into the Union as to the reservation of rights in favor of the Indians is given increased significance by the fact that Congress in creating the Territory expressly reserved such rights. Nor would this be affected by conceding that Congress, during the existence of the Territory, had full authority in the exercise of its treaty-making power to charge the Territory, or the land therein, with such contractual burdens as were deemed best, and that when they were imposed on a Territory it would be also within the power of Congress to continue them in the State, on its admission into the Union. Here the enabling act not only contains no expression of the intention of Congress to continue the burdens in question in the State, but, on the contrary, its intention not to do so is conveyed by the express terms of the act of admission."

The fact that Mr. Justice Brown dissented in that case shows that the opinion of the court was announced only after full and careful deliberation.

In the case against Sutton, to which I have referred, the opinion was apparently based upon the act admitting Washington into the Union.

In that case the court said:

"If the Yakima Reservation were within the limits of a Territory there would be no question of the validity of the statute under which this indictment was found, but the contention is that the offense charged is of a police nature and that the full police power is lodged in the State, and by it alone can such offenses be punished. By the second paragraph of sec. 4 of the enabling act with respect to the State of Washington (c. 180, 25 Stat., 677), the people of that State disclaimed all right and title 'to all lands lying within said limits

owned or held by any Indian or Indian tribes; and that until
59 the title thereto shall have been extinguished by the United

States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States." Construing this, in connection with other provisions of the enabling act, it was held in *Draper v. United States*, 164 U. S. 240, that it did not deprive the State of jurisdiction over crimes committed within a reservation by others than Indians or against Indians, following in this *United States v. McBratney*, 104 U. S. 621. But in terms 'jurisdiction and control' over Indian lands remain in the United States, and there being nothing in the section withdrawing any other jurisdiction than that named in *Draper v. United States*, undoubtedly Congress has the right to forbid the introduction of liquor and to provide punishment for any violation thereof."

Congress has understood that in order to prohibit the manufacture and sale of intoxicating liquors in ceded Indian lands, not reservations, after the Territory is admitted as a State, it is necessary that some provision relating thereto be inserted in the enabling act. This is shown by its treatment of Oklahoma. The enabling act for that Territory, 34 St. at L., 267, expressly provided on page 269:

"And said convention shall provide in said constitution * * *. Second. That the manufacture, sale, barter, giving away, or otherwise, furnishing, except as hereinafter provided, of intoxicating liquors within those parts of said State now known as the Indian Territory and the Osage Indian Reservation, and within any other parts of said State which existed as Indian reservations on the 1st day of January, nineteen hundred and six, is prohibited for a period of twenty-one years from the date of the admission of said State into the Union, and thereafter until the people of said State shall otherwise provide by amendment of said constitution and proper State legislation."

Other provisions were required to be inserted relating to the establishment of public agencies where alcohol for the industrial arts might be sold, and where intoxicating liquors might be sold to druggists.

60 This act came before the Circuit Court of the United States for the Western District of Arkansas, in the case of United States ex rel Friedman v. United States Express Company, 180 Fed., 1006, decided last July. This was a mandamus brought by Friedman against the express company to compel it to receive and ship intoxicating liquors to its customers in that part of Oklahoma formerly the Indian Territory.

The court held that the act admitting Oklahoma into the Union had repealed the act of 1897 relating to the introduction of liquors into the Indian country, so far as the Indian Territory was concerned, and granted the mandamus.

In view of these decisions, and particularly Ward v. Race Horse, what becomes of this provision of the treaty of 1855?

I can see no difference whatsoever in principle between this case and that case. There is, to be sure, this difference: That in the Race Horse case the act prohibiting was a State act, and the act permitting was a Federal act; while here the act prohibiting is a Federal act, and the act permitting is a State act. When I say "permitting," I mean that under the laws of Minnesota intoxicating liquors can be sold under certain circumstances in this district. Notwithstanding this difference in form, I see no difference in principle between the two cases. The question is, where is the power to regulate? Does the United States Government have the power to regulate the sale of intoxicating liquors in this district or does the State of Minnesota

have that power? It was said in the matter of Heff, 197 U. S., 61 488, that there could be no divided authority. If the United States Government has the power to regulate it, that power must come in conflict with the power of the State to regulate it. Moreover, a condition of things might arise where the two cases would be identical. The act of 1897 provides, as other acts have provided, that intoxicating liquors might be introduced into the Indian country by the consent of the War Department. The laws of Minnesota provide that a town may vote that no license shall be granted and no liquor shall be sold therein. If the War Department should undertake to give permission to some person to establish a dispensary within the limits of a town which had voted not to have any license there would be immediately a conflict between the two jurisdictions, and the identical case would be presented which was presented in the Race Horse case. That case is conclusive upon this question, to my mind, and holds that this provision of the treaty of 1855, so far as it relates to ceded territory, has been repealed.

It is said that the case of the United States v. 43 Gallons of Whiskey is a holding to the contrary, and that the case of Dick v. The United States is another holding to the contrary; but in both of

these cases the treaties were made after the State had been admitted to the Union and no question of this kind was either discussed or decided.

It may be said that the repeal was unintentional. It may be said that there was not any actual intention on the part of Congress to discontinue this clause with reference to ceded territory. In support

of this claim it may be argued that a similar clause was after-
62 wards inserted in the treaty of 1863. But that was not the act of Congress; it was the act only of the President and the Senate. Moreover, the extent of territory covered by that treaty was very much smaller than that covered by the treaty in question.

Before one says that this repeal was unintentional, it would be well for him to consider some of the facts alleged in the bill and admitted by the demurrer.

The tract of land ceded by this treaty commences about 30 miles west from the eastern boundary of the State, and extends westward more than 180 miles to the Dakota line. It commences near the city of Brainerd, which is about the geographical center of the State, and extends northerly more than 150 miles to the Canadian line. It covers an area of more than 15,000 square miles, and geographically is larger than the three New England States of Massachusetts, Rhode Island, and Connecticut. It has a population of 382,191, or more than the entire population of the State of Montana. The property in the district was assessed for taxation last year at \$93,910,142. There is within this district Bemidji, the county seat of Beltrami County; Brainerd, the county seat of Crow Wing County; Walker, the county seat of Cass County; Bagley, the county seat of Clearwater County; Grand Rapids, the county seat of Itasca County; Park Rapids, the county seat of Hubbard County; and Detroit, the county seat of Becker County.

This is not all. Before the question as to whether the repeal was intentional or not is decided, there must be considered the Sioux 63 treaty of 1851, 10 St. at L. 949. This contained a similar provision, and the land covered by it commences at the southeast boundary of the State and includes all the land in the State on the west side of the Mississippi River from there to Moorhead. There is more still. The Chippewa treaty of 1854, 10 St. at L. 1009, contained a clause prohibiting the sale of intoxicating liquors in the lands thereby ceded. The tract covered by the treaty includes the present city of Duluth, with a population of 75,000 and a large tract of country in that part of the State. It is safe to say that at the time Minnesota was admitted into the Union, three-fourths of its entire area was in the same condition, so far as the sale of intoxicating liquors is concerned, as the lands in question in this case.

While the present condition of the country perhaps was not then foreseen, Congress must have had in mind that the State would increase rapidly in wealth and population.

Was it the intent of Congress to keep in force a prohibition through such a vast extent of territory as this? Was it the intent of Congress to keep in force such a prohibition, and pay the enormous expense that would be necessary to make it effective?

There is a significant provision in this Sioux treaty of 1851. That treaty ceded to the United States all the lands owned by the Sioux Indians in the State of Iowa, and all the lands in the then Territory of Minnesota east of a line therein described, which is now practically the western boundary of the State. It declared that the provisions of the general law relating to the introduction of in-

64 toxicating liquors into the Indian country should continue to

be in force in all of the lands ceded which lay within the Territory of Minnesota. It said nothing at all about the lands ceded which lay in the State of Iowa. That omission, to my mind, is extremely significant. It can mean but one thing, and that is that it was in the mind of Congress that it had no power to prohibit the introduction of intoxicating liquors into the State of Iowa. If that were not the reason, why was there not the same provision with regard to Iowa that there was with regard to Minnesota?

In view of these facts, who can say with any degree of certainty that this repeal was not intentional? It would have been the most simple thing in the world for Congress to have inserted some provision in the enabling act preserving this treaty stipulation with reference to the rights of the Indians, and requiring its insertion in the Minnesota constitution, as they required Oklahoma to insert a similar provision in its constitution. But nothing of that kind was done.

There is another matter that has been referred to, and that is the practical construction that has been put upon this treaty by the Government. The bill alleges that the United States never attempted to enforce the treaty in the ceded lands until last year. The treaty having been promulgated in 1855, there passed more than fifty years of absolute quiescence on the part of the Government. It can therefore well be said that it never was supposed that this treaty

stipulation survived the admission of Minnesota into the Union.

65 But it is entirely beside the mark to guess and speculate as to what Congress would have done if its attention had been particularly called to the precise question here under discussion. This case must be decided, not upon an intention which was not expressed, but upon one that was expressed.

Referring again to the case of Ward vs. Race Horse, the court there said:

"The act which admitted Wyoming into the Union, as we have said, expressly declared that that State should have all the powers of the other States of the Union, and made no reservation whatever in favor of the Indians. These provisions alone considered would be in conflict with the treaty if it were so construed as to allow the Indians to seek out every unoccupied piece of Government land and thereon disregard and violate the State law, passed in the undoubted exercise of its municipal authority."

The opinion of the Attorney General (25 Op. Atty. Gen., 416), to my mind, does not cover this case, because it refers to reservations and not to ceded lands. While it is true that there are certain statements in the opinion to the effect that the provision as to ceded lands is still in force, yet no authorities are cited in support of that statement.

I can come to only one conclusion in the case, and that is that the provision in article 7 of the treaty of 1855, which prohibited the introduction of intoxicating liquors into the ceded country, was repealed by the act admitting Minnesota into the Union. It is therefore not necessary to consider any of the other questions argued by counsel.

I express no opinion upon the question as to whether the subsequent treaty of 1865 re-ceding to the Indians the land where Be-
66 midji now stands, and the treaty of 1867 by which the Indians again ceded to the United States that land, with no clause of this kind in the treaty, repealed article 7 of the treaty of 1855.

One of the grounds of demurrer to the bill states that the court has no jurisdiction of the case. Its jurisdiction rests upon diverse citizenship. It may be said to rest also upon the fact that the case arises under the laws of the United States. Yet if it did, that would not defeat the jurisdiction, even under the ruling in *Macon Grocery Co. v. Atlantic Coast Line*, 215 U. S. 501.

The objection that the defendants were sued in the wrong district was waived by their general appearance.

The result is that I will make an order overruling the demurrer to the bill, and assigning the defendants to answer at the next rule day. I will also make an order granting a temporary injunction, as prayed for in the bill.

(Indorsed:) Filed Jan. 13, 1911.

67 And on January 10th, 1911, the following order for a writ of temporary injunction was filed and entered of record in said cause, to wit:

68 In the Circuit Court of the United States for the District of Minnesota, Fourth Division.

EDWIN GEARLDS, L. J. KRAMER, FRED E. Brinkman, E. E. Gearlds, Albert Marshik, John A. Dalton, Edwin S. Fay, F. S. Lycan, John H. Sullivan, Harry Gansalus, J. E. Maloy, and Tillie Larson, complainants,

v.

W. E. JOHNSON, T. E. BRENTS, AND H. F. Coggeshall, defendants.

Order for temporary writ of injunction.

The above entitled matter and proceeding having come before the court on the 9th day of January, 1911, the said time having been fixed

by and with the agreement and consent of the attorneys for the hearing of the application on the part of the complainants for a temporary injunction and for a hearing upon the demurrer of the defendants to the amended bill in said cause, the complainants being represented by Messrs. Marshall A. Spooner and E. E. McDonald, and Charles C. Houpt, Esq., United States district attorney for the District of Minnesota, appearing in behalf of the defendants; and the court having heard the arguments of counsel upon the said motion and application for a temporary injunction, and upon the demurrer so filed to the amended bill herein, which were heard and considered together, and the court now being duly advised in the premises; and it being made to appear to the court that the complainants are entitled to a temporary injunction herein;

It is therefore ordered: That a temporary writ of injunction issue out of and under the seal of this court in the usual form, enjoining and restraining the defendants and each of them during the pendency of this action, or until the further order of the court, and each of their agents, servants, employes, and deputies, and all persons claim-

ing to act by, through, and under them, from going upon the
69 respective premises of the said several complainants particularly described in the amended bill filed in said cause, and from molesting or interfering with the said complainants or either of them in the conduct of their and each of their business and businesses as saloon keepers or in conducting bars and in selling and disposing of vinous, spirituous, malt, and other intoxicating liquors, while engaged in said business, and in conducting the same with persons other than Indians, and under the pretense and claim that it is unlawful to sell and dispose of such liquors, or either or any of the same, in the territory embraced within the limits of the said city of Bemidji, and from taking into their possession, or molesting or interfering with, seizing or destroying any of the stock, or the stocks on hand or in the possession of either or any of the said complainants, or any of the personal property of said complainants used in connection with such business either as now situated upon the said premises described in the bill herein, or which complainants or either of them may hereafter acquire, place, or keep within any building on either of said premises, or any other building to which either of the said complainants may remove the same or any part thereof.

And it is further ordered that the said demurrer of the said defendants to the said amended bill be, and the same is hereby, overruled, but with leave to the said defendants to answer the said amended bill on or before the next rule day, if they be so advised.

Dated this 9th day of January, 1911.

CHARLES A. WILLARD, *Judge.*

(Endorsed:) Filed Jan. 10, 1911. Henry D. Lang, clerk, by Clara M. Owens, deputy.

70 And on March 28th, 1911, the following amended bill of complaint was filed of record in said cause, to wit:

71 In the Circuit Court of the United States for the District of Minnesota, Fourth Division.

EDWIN GEARLDS, L. J. KRAMER, FRED E. BRINKMAN, E. E.

Gearlds, Albert Marshik, John A. Dalton, Edwin Fay,

F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E.

Maloy, and Tillie Larson, complainants,

vs.

W. E. JOHNSON, T. E. BRENTS, and H. F. COGGESHALL,

defendants.

In equity.

To the honorable the judges of the Circuit Court of the United States for the District of Minnesota:

Edwin Gearlds, L. J. Kramer, Fred E. Brinkman, E. E. Gearlds, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, each a resident of the city of Bemidji, Beltrami County, in the State of Minnesota, and each a citizen of the State of Minnesota, bring this bill against W. E. Johnson, a citizen of the State of California, T. E. Brents, a citizen of the State of Oklahoma, and H. F. Coggeshall, a citizen of the State of New York, and thereupon your orators complain and say:

That your complainant, Edwin Gearlds, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more

72 than two years continuously last past has been engaged at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and porter, at a known and established place of business, to wit, in a store building on lot eight (8) in block fourteen (14) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing said intoxicating liquors at such places during such period in quantities less than five (5) gallons at a

time; that the said Edwin Gearlds also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji authorizing and permitting the said Edwin Gearlds to conduct such saloon business, and to sell and dispose of said intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, L. J. Kramer, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than two years continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper and in the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and

73 porter, at a known and established place of business, to wit, in a store building on lot fourteen in block fourteen (14) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such places during such period in quantities less than five (5) gallons at a time; that the said L. J. Kramer also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council and the officials of the said city of Bemidji, authorizing and permitting the said L. J. Kramer to conduct a saloon business and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, Fred E. Brinkman, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for fourteen years continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper and in the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and porter, at a known and established place of business, to wit, in a store building on lot ten (10) in block seventeen (17) in said city of

74 Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and

received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place and during such period in quantities less than five (5) gallons at a time; that the said Fred E. Brinkman also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council and the officials of the said city of Bemidji, authorizing and permitting the said Fred E. Brinkman to conduct such saloon business and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, E. E. Gearlds, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than three years continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and porter, at a known and established place of business, to wit: In a store building on lot eleven (11) in block fourteen (14) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States

Government the sum of twenty-five (\$25) dollars as a special
75 tax on the business of retail liquor dealer at the place herein-
before specifically mentioned, and for the purpose of enabling
the said complainant to so engage in such business at such place, and
received from said Government a receipt for such special tax on the
business of retail liquor dealer at and in such location, and the said
receipt so issued to said complainant was issued to cover a period
between and including July 1st, 1910, and June 21st, 1911, and said
complainant was authorized, by reason of such payment and the issuance
of the said receipt therefor, to engage in the business of retailing
intoxicating liquors at such place during such period in quantities
less than five (5) gallons at a time; that the said E. E. Gearlds also
held at all such times, and now holds, a license issued on the authority
of the State of Minnesota, and by the municipal council, and the
officials of the said city of Bemidji, authorizing and permitting the
said E. E. Gearlds to conduct such saloon business, and to sell and
dispose of intoxicating liquors at retail, which said license was in
full force at all the times hereinafter referred to.

That the said complainant, Albert Marshik, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than one year continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous and vinous liquors, beer,

ale, and porter at a known and established place of business, to wit: In a store building on lot six (6) in block seventeen (17) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the
76 said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said Albert Marshik also held at all such times, and now holds, a license issued on the authority of the State of Minnesota and by the municipal council, and the officials of the said city of Bemidji, authorizing and permitting the said Albert Marshik to conduct a saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, John A. Dalton, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than three years continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and porter at a known and established place of business, to wit: In a store building on lot one (1), block seventeen (17) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government, the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business, and received from said Government a receipt for such special tax on the business of retail
77 liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place and during such period in quantities less than five (5) gallons at a time; that the said John A. Dalton also held at all such times, and now holds, a license issued on the authority of the State of Minnesota,

and by the municipal council, and the officials of the said city of Bemidji, authorizing and permitting the said John A. Dalton to conduct a saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, Edwin Fay, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than one year continuously last past has been engaged, at said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and porter, at a well-known and established place of business, to wit: In a store building on lot eight (8) in block nineteen (19) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for said special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st,

1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said Edwin Fay also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji, authorizing and permitting the said Edwin Fay to conduct such saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the said complainant, F. S. Lycan, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than four years last past has been engaged, at said city of Bemidji, in the business of operating and conducting a bar, in connection with and incidental to a hotel business conducted by said complainant in the Markham Hotel building situated on lots thirteen (13) and fourteen (14) in block eighteen (18) in the original townsite of Bemidji, Minnesota, at which bar said complainant has been engaged in the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and porter, and was and is authorized to conduct such business by both Federal and municipal authorities, in that the said complainant duly paid to the Internal Revenue Department of the United

States Government, the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911,

and the said complainant was authorized, by reason of such 79 payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said F. S. Lycan also held at all such times, and now holds, a license issued on the authority of the State of Minnesota and by the municipal council and the officials of the said city of Bemidji authorizing and permitting the said F. S. Lycan to conduct such bar and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the said complainant, John H. Sullivan, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than five years continuously last past has been engaged, at said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and porter at a known and established place of business, to wit, in a store building on lot one (1) in block twenty-one in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said John H.

80 Sullivan also held at all such times, and now holds, a license issued on the authority of the State of Minnesota and by the municipal council and the officials of the said city of Bemidji authorizing and permitting the said John H. Sullivan to conduct such saloon business and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, Harry Gunsalus, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than

one year continuously last past has been engaged, at said city of Bemidji, in the business of saloon keeper and the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and porter, at a known and established place of business, to wit, in a store building on lots eleven (11) and twelve (12) in block (17) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period including the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said Harry Gunsalus also held at all such times, and now holds, a license issued on the authority of
81 the State of Minnesota, and by the municipal council and the officials of the said city of Bemidji, authorizing and permitting the said Harry Gunsalus to conduct a saloon business and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

That the complainant, J. E. Maloy, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than three years continuously last past has been engaged, at the said city of Bemidji, in the business of saloon keeper and in the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and porter, at a known and established place of business, to wit, in a store building on lot five (5) in block seventeen (17) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period between and including July 1st, 1910, and June 21st, 1911, and the said complainant was authorized by reason of such payment and the issuance of the said receipt therefor to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a

time; that the said J. E. Maloy also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council and the officials of the said city of Bemidji, authorizing and permitting the said J. E. Maloy to conduct a saloon business and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

82 That the complainant, Tillie Larson, is a resident and citizen of the city of Bemidji, Beltrami County, Minnesota, and for more than four years continuously last has been engaged, at the said city of Bemidji, in the business of saloon keeper, and in the selling and disposing at retail of spirituous and vinous liquors, beer, ale, and porter, at a known and established place of business, to wit: Lot eight (8) in block seventeen (17) in said city of Bemidji, and was and is authorized to conduct such business by both Federal and municipal authority, in that the said complainant duly paid to the Internal Revenue Department of the United States Government the sum of twenty-five (\$25) dollars as a special tax on the business of retail liquor dealer at the place hereinbefore specifically mentioned, and for the purpose of enabling the said complainant to so engage in such business at such place, and received from said Government a receipt for such special tax on the business of retail liquor dealer at and in such location, and the said receipt so issued to said complainant was issued to cover a period to include the period between and including July 1st, 1910, and June 21st, 1911, and said complainant was authorized, by reason of such payment and the issuance of the said receipt therefor, to engage in the business of retailing intoxicating liquors at such place during such period in quantities less than five (5) gallons at a time; that the said Tillie Larson also held at all such times, and now holds, a license issued on the authority of the State of Minnesota, and by the municipal council, and the officials of the said city of Bemidji authorizing and permitting the said Tillie Larson to conduct a saloon business, and to sell and dispose of intoxicating liquors at retail, which said license was in full force at all the times hereinafter referred to.

83 That the value of the personal property and of the business of each of said complainants herein referred to, and which will be affected by the acts of the defendants herein mentioned, exceeds the sum of two thousand dollars (\$2,000) in each instance, exclusive of interest and costs, and said complainants and each of them will be damaged in an amount exceeding two thousand dollars (\$2,000) dollars each, exclusive of interest and costs, in case the defendants, and each of them, proceed to do the acts and things herein complained of, and the matter in dispute herein as respects each of said complainants, exclusive of interest and costs, exceeds the sum of two thousand dollars (\$2,000).

Your orators further say that they each, in vending and disposing of liquors under their said licenses, have refrained from selling or dis-

posing of any liquor to Indians or individuals of Indian blood, and each has, in every way and in all respects, complied with and observed all laws of the United States and of the State of Minnesota providing against the sale of liquor to Indians, or enacted to prevent liquor coming into their possession, and each of your orators has endeavored to obey, and has obeyed, and complied with all laws regulating the sale of, and traffic in, such liquors.

Your orators each further say that each of them has built up and established a profitable and lucrative trade in his respective place of business, as hereinbefore described and set forth, and that each of said complainants will be affected by the acts of the defendants if done and carried out as by them threatened, and as hereinafter more particularly set forth, and that each of said complainants has a common interest in any restraining or injunctional order herein sought, and in any such remedy as in this proceeding it is sought to have administered, and by joining in this action, and in seeking the relief herein asked these complainants seek to avoid a multiplicity of actions and suits, and your orators further say that unless the said defendants are restrained and enjoined from doing the acts herein-after set forth, the established business of each of these complainants will be destroyed and ruined, and your orators are without any plain, adequate, or speedy remedy at law and can only have relief in a court of equity, and that irrevocable injury will be inflicted upon your orators, and each of them, in case this honorable court does not enjoin and restrain the defendants, and each of them, from doing and performing the acts and things hereinafter referred to, and which said defendants and each of them now threaten to do.

Your orators further say that Beltrami County, Minnesota,
84 is now, and ever since the year 1897, has been a municipal corporation duly organized, created, and existing under and by virtue of the laws of the State of Minnesota, and forming a part of said State and as such county has had within its territory, during all the time elapsing since its organization, the usual county, town, city, and village officers, and the various forms of local government as provided for and prescribed by the laws of the State of Minnesota applying to organized counties and lesser political subdivisions; that the city of Bemidji, herein referred to, is the county seat of said Beltrami County, and is a municipal corporation organized under the laws of the State of Minnesota as a city, and within its corporate limits contains a population of about seven thousand inhabitants, and in connection with other municipalities, to wit, villages under separate organizations, but immediately adjacent to the territorial limits of said municipality and which latter, except for the fact that they exist under a separate and distinct governmental organization, are commercially a part of said city, constitutes a community which has a population of about 9,000 people. That the original form of government of the said Bemidji was that of a village form of government under the laws of the State of Minnesota and such village was

organized under the laws of said State in the year 1898; that said city of Bemidji is, and since its original organization as a village has been, a growing and thrifty town increasing rapidly in population, and the country tributary thereto has had and enjoyed a like growth; that there are many blocks of substantial business buildings, largely brick and stone, in said city, and hundreds of beautiful and costly residences, nine churches of nine different denominations, four costly and expensive schoolhouses, a costly public library, a courthouse and other county property of the value of at least one hundred thousand dollars, ten hotels, an extensive system of water works and an electric light plant; the city is situated on five lines of railroad, three of said lines being either transcontinental or parts of transcontinental lines, and said city is now recognized as the metropolis of the northern central portion of Minnesota; that within the immediate vicinity of the said city of Bemidji are many smaller, flourishing, and thrifty towns; that there are situated on the Minnesota & International Railway, which is a part of the Northern Pacific Railway system, north of said city of Bemidji and between said city and the boundary line between the United States and Canada, within a distance of 108 miles, seventeen stations and towns; that there are situated on the Great Northern Railway, between said city of Bemidji and the Red River of the North, on the line of said railway, running east and west thru said city of Bemidji, within a distance of 92 miles, fifteen thriving and important towns; that there are situated on said Great Northern Railroad, east of the said city of Bemidji and between said city of Bemidji and the city of Duluth, Minnesota, within a distance of 150 miles, twenty flourishing and thriving villages and towns; and that south of the said city of Bemidji, on said Northern Pacific line, between it and the city of Brainerd, which is, practically, the geographical center of the State of Minnesota, and within 92 miles are sixteen important and thriving towns and stations; that within a distance of 87 miles of said city of Bemidji on the Sauk Center branch of the Great Northern Railroad, there are twelve or more prominent, prosperous, thriving towns, and villages; that on the Minneapolis, St. Paul & Sault Ste. Marie Railroad, but recently built thru the said city of Bemidji, and which said line has been projected as the main and direct line of said road between the city of Winnipeg, Canada, and the city of Chicago, Illinois, and within a distance of 40 miles in either direction from said city of Bemidji, on said line, there are at least twenty thriving and growing towns and villages; that the assessed value of real and personal property for the said city of Bemidji for the purpose of taxation is now the sum of 1,615,572 dollars; that the assessed valuation of real and personal property for the purpose of taxation in said Beltrami County is now the sum of 6,881,175 dollars; that the assessed valuation of all the counties affected by such treaty of 1855, was, in the year 1909, \$93,910,142. That many farms have been opened up in all directions from said city of Bemidji and the country adjacent thereto not already opened up is rapidly being taken up

and converted into farms; that all the country lying within the exterior boundaries of the territory of 1855 is now populated with white people.

And your orators further state that there are not now and heretofore have not been any Indians resident in said territory or heretofore enrolled at the Government Indian agencies who are not now, and who for several years have not been allottees, either under the act of Congress of February, 1887, or January 14th, 1899, or their children; and that each and all of such now are and for several years last past have been full citizens of the United States and entitled to all the rights, privileges, and immunities of such citizens. That no Indian, nor his descendant, having or entitled to a residence upon, or being within said territory, or heretofore a member of the Chippewa Tribe of Indians, now sustains or recognizes the existence of any tribal relationship as between himself and any other Indian, and all tribal relations, as among the Chippewa Tribe of Indians and the several bands of Indians originally constituting such tribe within said territory, have been abandoned, abolished, set aside, and are now ignored, and the several individuals and members heretofore composing said bands and said tribe within said Territory now recognize no allegiance to any chief or leader or other authority among such Indians. That there are not now any Indian reservations of any kind within said Territory, and all the lands embraced within the exterior boundaries of the Territory affected by the treaty of 1855 have been ceded to the United States or have been disposed of under the laws of the United States relating to the disposition of the public lands, or have been designated as forestry reserve, or have been allotted to the individual Indians, except such small portions of land as have been retained by the United States Government at its former Indian agencies, a part of which latter is an area of land not exceeding 160 acres on what was formerly the White Earth Reservation, and upon a portion of which stand the old agency buildings

and Indian schoolhouses, and upon which is situated the town-
87 site of White Earth, lots in which townsite are now being sold by the United States Government to white people or Indians, as applications therefor are made, and an area of about 600 acres on a point of land in Leech Lake, upon which is located the old Indian agency buildings and Indian school buildings; an area of land of less than 80 acres north of Cass Lake, upon which are buildings formerly used for an Indian school; and a tract of land of less than 200 acres, on which are the buildings formerly occupied for an Indian school at Bena, Minnesota, the use of which, for such purposes, has been abandoned. That the said lands at White Earth and Leach Lake, upon which are located the buildings occupied by the superintendents of Indian schools and disbursing agents, are more than 40 miles distant from the said city of Bemidji. That since the allotments to the Indians herein referred to, the duties and authority of the Indian agents in said Territory have been materially changed and modified, and the officials formerly acting in that capacity have

now practically no duties to perform, except to superintend the affairs relating to Indian schools and to disburse annuities to the Indians.

That the laws of the State of Minnesota now prohibit, and ever since 1866 have prohibited, the sale of intoxicating liquors of any kind to persons of Indian blood, without any exception or qualification, and have made a violation of this law a felony.

That Indians very infrequently visit the city of Bemidji, and then only in small numbers and for the purpose of selling berries during the berry season, and there are no Indian habitations within a range of twenty miles in any direction from the said city of Bemidji, and the said city of Bemidji now is, and for at least twelve years last past has been, as well as the territory surrounding the same, under municipal and State government, and in all said territory the jurisdiction of the State for all purposes of government has been full and complete, and since the year 1867, as hereinbefore more fully set forth, the Indian title to the territory embraced within the city limits of the said city of Bemidji and adjoining territory has been completely extinguished.

Your orators further say that prior to the 22nd day of February, 1855, a tribe of Indians, known as Chippewa Indians, comprising the Mississippi, Pillager, and Lake Winnibegoshish Bands of Chippewa Indians, were in possession of the greater portion of the lands north of parallel 46, within the boundaries of the then Territory of Minnesota, and on said date the said bands of Indians entered into a treaty with the United States, under the terms of which there was sold and conveyed to the said United States all the right, title, and interest in and to the lands then owned and claimed by the said bands of Indians in the Territory of Minnesota north of a line near to said 46th

parallel of latitude, excepting that by the second article of
88 said treaty there were set apart to the said Indians certain

scattering reservations, none of which latter included any lands at any time within the municipal limits of the said city of Bemidji, nor any lands adjacent thereto or within at least ten miles thereof, and under the terms of such treaty the United States took over and became the owner and possessor of the lands now within the territorial limits of the said city of Bemidji, and all lands adjoining and contiguous thereto for many miles to the north, west, and south, and for at least ten miles to the east of where said city is now located; that among other provisions of the said treaty there was included in the said treaty the following language:

“Article 7. The laws which have been or may be enacted by Congress, regulating trade and intercourse with the Indian tribes, to continue and be in force within the several reservations provided for herein; and those portions of said laws which prohibit the introduction, manufacture, use of, and traffic in, ardent spirits, wines, or other liquors, in the Indian country, shall continue to be in force, wherein the entire boundaries of the country herein ceded to the United States, until otherwise provided by Congress.”

Your orators say that they are advised and believe, and accordingly state that the defendants have done the acts hereinafter referred to, and are about to do and perform the things hereinafter complained of, claiming to derive their authority so to do, largely if not entirely, from the provisions contained in said article 7.

Your orators further state that these defendants, and especially the defendants W. E. Johnson and T. E. Brents, acting in conjunction and in unison as special officers connected with the Indian Department as administered by the Interior Department of the United States Government, and claiming to act under authority conferred by said article 7 of said treaty aforesaid, and the provisions of sections 2139 and 2140 of the United States statutes and

88 amendments thereof, have at divers and sundry towns and cities of northern Minnesota, and included within the territory ceded to the United States Government under the said

treaty of February 22d, 1855, and which treaty was ratified March 3d, 1855, and proclaimed April 7th, 1855, including the city of Brainerd, the county seat of Crow Wing County, in said State; the village of Walker, the county seat of Cass County, in said State; the village of Bagley, the county seat of Clearwater County, in said State; the village of Grand Rapids, the county seat of Itasca County, in said State; the village of Park Rapids, the county seat of Hubbard County, in said State; the city of Detroit, the county seat of Becker County, in said State; and in many other towns and villages in said territory, ceded as aforesaid, and in each of which places and over the inhabitants of which, the jurisdiction of the State for all purposes of government was full and complete and generally and universally recognized so to be, entered upon private property where individuals and concerns were engaged in the sale of intoxicating liquors, and in each of which instances the persons and concerns so engaged held licenses from the United States Government to sell at retail, and also licenses from the county or municipal government to sell and dispose of such liquors under licenses authorized to be issued under the laws of the State of Minnesota, and in instances destroyed such liquors in stock, and in other instances compelled the proprietors, engaged in the business of vending such liquors, to ship the same to other and remote portions of the said State, and into territory beyond the limits of the land ceded by the said Chippewa Indians to the United States under said treaty, and then and there claimed and asserted that the city of St. Paul was the nearest point into which intoxicating liquors might be shipped, and the nearest point in the State not coming within the provisions of some similar treaty provision against the introduction into and presence of intoxicating liquor in Indian country, and ordered and directed the proprietors of such places to close up their places of business and to desist from further engaging in such business at such places

90 and have threatened to arrest and prosecute such proprietors under the claim that they are unlawfully selling and disposing of liquor in "the Indian country," contrary to the provisions

of the said statutes and the said article 7 of said treaty, and the said defendants, and especially the said T. E. Brents and H. F. Coggeshall, acting jointly and in unison, did, on the 9th day of December, 1910, order and direct twenty other saloon keepers in the said city of Bemidji, holding licenses issued by the Federal Government to sell intoxicating liquors at retail in quantities less than five (5) gallons at a time, and holding municipal licenses, issued under the authority of the State of Minnesota, to vend intoxicating liquors, to close up their places of business and to desist further in the sale and disposition of such liquors in said city of Bemidji, and ordered and directed said saloon keepers to ship out such stocks of goods as they had on hand, and on such day and date, to wit: the said 9th day of December, 1910, these defendants, T. E. Brents and H. F. Coggeshall, acting jointly in the premises, and as your orators state and charge, in connection with the defendant, W. E. Johnson, and under his instructions, and in conjunction with the said Johnson, in the execution of his orders, to direct and command each of the several complainants herein to desist from further engaging in the business of selling and disposing of intoxicating liquors in the city of Bemidji, did then and there order and command each of the said complainants to close up his place of business and to remove and ship out his stock of liquors, of which each of the said complainants then had on hand a quantity, and did command each of these complainants to refrain from further engaging at said city of Bemidji in the business of selling and disposing of intoxicating liquors. That the defendants, and each of them, are now threatening, in case said

complainants, or either of them, fail to observe the order so given, to enter upon the premises of each of the said several complainants and to close up the business of said complainants, and each of them, and to destroy the stocks of liquor now in the possession of said complainants, and each of them, and the utensils and wares used and employed in the vending of the same, and to ruin and destroy the established business of each of the said complainants, and the said defendants, and each of them, further threaten, in the event of the refusal of the said complainants, or either of them, to obey and recognize the orders so given, to arrest and cause to be arrested said complainants, and each of them charged with the unlawful introduction, sale, and disposition of intoxicating liquors as in "the Indian country."

That during the fifty-five years elapsing since the making of said treaty of 1855, no effort has been made, either by Federal or State authority until recently, to prevent the introduction into, sale of, and traffic in, intoxicating liquors in any of the territory ceded by the Chippewa Indians to the United States under said treaty of 1855, and no prosecution has been instituted by the United States charging such introduction; and during all said period, and for more than

thirty years last past, licenses have been granted by State and municipal authorities to engage in the sale and disposition of intoxicating liquors in all such territory outside of said reservations, and during all such time the United States Government has accepted and received from persons desiring to engage in such business, special tax on the business of retail liquor dealer in all of said territory, and has issued its receipts therefor, which conferred upon the individuals to whom the same were issued the authority of the United States Government to sell and dispose of intoxicating liquors, in quantities of less than five (5) gallons at a time, and it has only

been within the last several months that representatives and
92 agents of the Indian Department have undertaken to prevent the introduction and sale of liquor in said country, or to interfere with, or molest, persons engaged in the sale and disposition of intoxicating liquors in any portion of said ceded territory.

And your orators reiterate that neither of the defendants is a citizen of the State of Minnesota, nor resident thereof, nor has any property therein; and these complainants further say, on information and belief that defendants are not financially responsible, and that any judgment that might be recovered against defendants, or either of them, in an action at law would not be collectible; that these complainants have no remedy against said defendants should they carry out such threats, as aforesaid, than there may be afforded to these complainants in this equitable proceeding; and your orators say that they believe that unless restrained and enjoined by the court from so doing said defendants will proceed to carry out their threats so made, and will, under their assumption of authority so to do, close up the places of business of said complainants and each of them, and will ruin and destroy the business of each of the said complainants and will waste and destroy the stocks of liquor of the said several complainants and the utensils and wares by them used in carrying on such business, and will attempt to carry out their threats to cause the arrest and prosecution of said complainants and each of them, under a charge and charges to be lodged by said defendants and each of them, against said complainants and each of them, of unlawfully selling and disposing of intoxicating liquors in "the Indian country," and of a violation of the provisions of sections 2139 and 2140 of the United States Statutes and amendments thereof.

And your orators further say that, after the making and proclamation of said treaty of 1855, as aforesaid, and on the 7th day of
93 May, 1864, the said Chippewa Indians and the United States

entered into another treaty, which treaty was ratified on the 9th day of February, 1865, and was proclaimed on the 20th day of March, 1865, and under and by the terms of article 2 of which treaty, in consideration of the cession to the United States Government by the said Chippewa Indians of certain reservations included within the provisions of the said treaty of 1855, and other

considerations, there was set apart for the future home of the Chippewas of the Mississippi all the lands embraced within the following described boundaries (excepting the reservation made and described in the third clause of the second article of the said treaty of February 22d, 1855, for the Pillager and Lake Winnebagoshish bands); that is to say, beginning at a point one mile south of the most southerly point of Leach Lake and running thence in an easterly course to a point; thence one mile south of the most southerly point of Goose Lake; thence due east to a point due south from the intersection of the Pokagomin Reservation and the Mississippi River; thence on the dividing line between Deer River and Lake Mashkordens River and lakes until a point is reached north of the first-named river and lakes; thence in a direct line northwesterly to the outlet of Two Route Lake; then in a southwesterly direction to Turtle Lake; thence southwesterly to the head water of Rice River; thence northwesterly along the line of the Red Lake Reservation to the mouth of Thief River; thence down the center of the main channel of the Red Lake River to a point opposite the mouth of Black River; thence southwesterly in a direct line with the outlet of Rice Lake to a point due west from the place of beginning; thence to the place of beginning.

Your orators further say that the lands so set apart to the said Chippewas of the Mississippi contained all the territory now within the territorial limits of the city of Bemidji, and all the lands immediately adjacent thereto and distant several miles in all directions

therefrom, and that by the terms of said treaty of 1864 the Mississippi band of Chippewa Indians became repossessed of, and 94 the sole owners of, all the lands now within the city limits of the said city of Bemidji, and all the lands immediately adjacent thereto for a number of miles in each and every direction.

Your orators further say that again and on the 19th day of March, 1867, the Chippewas of the Mississippi, being the owners and in possession of the territory last referred to, and the United States Government again entered into another and new treaty which involved the said lands, and which treaty was ratified on the 8th day of April, 1867, and proclaimed on the 18th day of April, 1867, and which treaty was and is in its entirety as follows, towit:

TREATY WITH THE CHIPPEWAS OF THE MISSISSIPPI, 1867.

Articles of agreement made and concluded at Washington, D. C., this 19th day of March, A. D. 1867, between the United States, represented by Louis V. Bogy, special commissioner thereto appointed, William H. Watson, and Joel B. Bassett, United States agent, and the Chippewas of the Mississippi, represented by Que-wo-zance, or Hole-in-the-day, Qui-we-shon-shis, Wau-bon-a-quot, Min-o-dowb, Mijaw-ko-ko-shik, Shob-osk-kunk, Ka-gway-dosh, Ma-ne-ko-shik, Way-namoe, and O-gub-ay-gwan-ay-aush.

Whereas, by a certain treaty ratified March 20th, 1865, between the parties aforesaid, a certain tract of land was, by the second article thereof, reserved and set apart for a home for the said band of Indians, and by other articles thereof provisions were made for certain moneys to be expended for agricultural improvements for the benefit of said bands; and whereas it has been found that the said reservation is not adapted for agricultural purposes for the use of such of the Indians as desire to devote themselves to such pursuits, while a portion of the bands desire to remain and occupy a part of the aforementioned reservation and to sell the remainder thereof to the United States: Now, therefore, it is agreed—

95 Article 1. The Chippewas of the Mississippi hereby cede to the United States all their lands in the State of Minnesota, secured to them by the second article of their treaty of March 20, 1865, excepting and reserving therefrom the tract bounded and described as follows, towit: Commencing at a point on the Mississippi River, opposite the mouth of Wanoman River, as laid down on Sewall's map of Minnesota; thence due north to a point two miles further north than the most northerly point of Lake Winnebigoish; thence due west to a point two miles west of the most westerly point of Cass Lake; thence south to Kabekona River; thence down said river to Leech Lake River; thence down the main channel of said river to its junction with the Mississippi River, and thence down the Mississippi to the place of beginning.

And there is further reserved for the said Chippewas out of the land now owned by them such portion of their Western outlet as may upon location and survey be found to be within the reservation provided for in the next succeeding section.

Article 2. In order to provide a suitable farming region for the said bands there is hereby set apart for their use a tract of land to be located in a square form as nearly as possible with lines corresponding to the Government surveys, which reservation shall include White Earth Lake and Rice Lake and contain thirty-six townships of land; and such portions of the tract herein provided for as shall be found upon actual survey to lie outside of the reservation set apart for the Chippewas of the Mississippi by the second article of the treaty of March 20, 1865, shall be received by them in part consideration for the cession of lands made by this agreement.

Article 3. In further consideration of the lands herein ceded, estimated to contain about two million acres, the United States agree to pay the following sums, towit: Five thousand dollars for the erection of school buildings upon the reservation provided for in

96 the second article, four thousand dollars each year for ten years,

and as long as the President may deem necessary after the ratification of this treaty, for the support of a school or schools upon said reservation; ten thousand dollars for the erection of a

sawmill, with gristmill attached, on said reservation; five thousand dollars to be expended in assisting in the erection of houses for such of the Indians as shall remove to said reservation.

Five thousand dollars to be expended, with the advice of the chiefs, in the purchase of cattle, horses, and farming utensils, and in making such improvements as are necessary for opening farms upon said reservation.

Six thousand dollars each year for ten years, and as long thereafter as the President may deem proper, to be expended in promoting the progress of the people in agriculture, and assisting them to become self-sustaining by giving aid to those who will labor.

Twelve hundred dollars each year for ten years for the support of a physician, and three hundred each year for ten years for necessary medicines.

Ten thousand dollars to pay for provisions, clothing, or such articles as the President may determine, to be paid to them immediately on their removal to their new reservation.

Article 4. No part of the annuities provided for in this or any former treaty with the Chippewas of the Mississippi bands shall be paid to any half-breed or mixed blood, except those who actually live with their people upon one of the reservations belonging to the Chippewa Indians.

Article 5. It is further agreed that the annuity of \$1,000 a year which shall hereafter become due under the provisions of the third article of the treaty with the Chippewas of the Mississippi bands, of August 2, 1845, shall be paid to the chief, Hole-in-the-day, and

to his heirs, and there shall be set apart, by selections to be made 97 in their behalf and reported to the Interior Department by the agent, one half section of land each, upon the Gulf Lake Reservation, for Min-e-ge-shig and Truman A. Warren, who shall be entitled to patents for the same upon such selections being reported to the department.

Article 6. Upon the ratification of this treaty, the Secretary of the Interior shall designate one or more persons who shall, in connection with the agent for the Chippewas in Minnesota, and such of their chiefs, parties to this agreement, as he may deem sufficient, proceed to locate, as near as may be, the reservation set apart by the second article hereof, and designate the places where improvements shall be made, and such portion of the improvements provided for in the fourth article of the Chippewa treaty of May 7, 1864, as the agent may deem necessary and proper, with the approval of the Commissioner of Indian Affairs, may be made upon the new reservation, and the United States will pay the expenses of negotiating this treaty, not to exceed ten thousand dollars.

Article 7. As soon as the location of the reservation set apart by the second article hereof shall have been approximately ascertained and reported to the Office of Indian Affairs, the Secretary of the Interior shall cause the same to be surveyed in conformity to the system of Government surveys, and whenever, after such survey,

any Indian of the bands parties hereto, either male or female, shall have ten acres of land under cultivation, such Indian shall be entitled to receive a certificate showing him to be entitled to the forty acres of land, according to legal subdivision, containing the said ten acres, or the greater part thereof, and whenever such Indian shall have an additional ten acres under cultivation, he or she shall be entitled to a certificate for additional forty acres, and so on, until the full amount of one hundred and sixty acres may have been certified to any one Indian; and the lands so held by any Indian shall be exempt from taxation and sale for debt, and shall not be alienated except with the approval of the Secretary of the Interior, and in no case to any person not a member of the Chippewa Tribe.

Article 8. For the purpose of protecting and encouraging the Indians, parties to this treaty, in their efforts to become self-sustaining by means of agriculture, and the adoption of the habits of civilized life, it is hereby agreed that, in case of the commission by any of the Indians of crimes against life or property, the person charged with such crimes may be arrested, upon the demand of the agent, by the sheriff of the county of Minnesota in which said reservation may be located, and when so arrested may be tried, and, if convicted, punished in the same manner as if he were not a member of an Indian tribe.

In testimony whereof, the parties aforementioned, respectively representing the United States and the said Chippewas of the Mississippi, have hereunto set their hands and seals the day and year first above written.

Ratified April 8, 1867.

Proclaimed April 18, 1867.

Your orators further state that the United States has carried out and performed all the obligations assumed by it under the terms of said treaty, and has fully performed the same on its part, and they submit that, under the terms and provisions of said treaty, proclaimed on the 20th day of March, 1865, the lands now within the limits of the said city of Bemidji and adjacent thereto, became absolutely the lands of the Mississippi bands of Chippewa Indians; that said lands were afterward again ceded to the United States, under the provisions of the treaty proclaimed April 18th, 1867, which cession was made without any restrictions or limitations whatever, and without any provisions relative to the introduction of intoxicating liquors into or sale thereof in such territory; and that by reason thereof, and of the premises since the making of the said treaty of 1867, as aforesaid, the provisions of sections 2139 and 2140 of the United States Statutes and amendments thereof, are not operative within said territory whereon stands the said city of Bemidji, and the

same is not Indian country within the meaning of said sections, 99 and that said defendants, in attempting to prevent these complainants from further continuing their business hereinbefore referred to are, and each of them is, acting without authority.

And your orators further allege that in and by an act of Congress entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889, the President was authorized and directed to appoint three commissioners to negotiate with the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment of all their title and interest in and to all their reservations in said State, except the White Earth and Red Lake Reservations and to all and so much of these two reservations as in the judgment of said commissioners was not required to make the allotments provided for by said act. And it was further provided in and by said act that the acceptance and approval of the cession and relinquishment provided for therein by the President should operate as a complete extinguishment of the Indian title without any further act or ceremony whatsoever for the purposes and upon the terms provided in said act.

And your orators further aver that pursuant to the provisions of the said act, the President duly appointed three commissioners to negotiate with the said band of Chippewa Indians for the cession and relinquishment of their said reservations and that at divers times between the 8th day of July and the 12th day of November, 1889, agreements were entered into between said commissioners on the part of the United States and the several bands of Chippewa Indians wherein and whereby the said Indians accepted, consented to, and ratified the said act of February 14, 1889, and each and all of the provisions thereof, and granted, ceded, relinquished, and conveyed to the United States, all their right, title, and interest in and to all of the Grand Portage, Fond du Lac, Nett Lake, Deer Creek, Leech Lake, Winnibegoshish, and Chippewa Reservations and in like manner ceded, relinquished, and conveyed to the United States all their right, title, and interest in and to four townships of the White Earth Reservation and the greater part of the Red Lake Reservation, and that said agreements and cessions were duly approved by the President on the 4th day of March, 1890.

100 And your orators further show that upon the approval of the agreements and cessions above mentioned by the President, the Indian title in and to all the lands thereby ceded was absolutely and completely extinguished, without any condition or limitation whatsoever, save only that the said lands were subject to disposal in the manner and for the purposes provided in said act and not otherwise.

Your orators further say that at the time of the making of the treaty of 1855, hereinbefore referred to, the lands ceded by the Chippewa Indians under said treaty then were and constituted a vast wilderness, altogether uninhabited by any civilized people; that since the making of said treaty and the acquisition of the territory therein ceded within the limits of the State of Minnesota, the country so ceded, with the exception of segregated portions thereof included within the reservations retained by the Indians under treaties be-

tween said Indians and the United States, has been largely developed, gradually at first, but with phenomenal rapidity within the last fifteen years, and with the exception of a portion of such territory now included within the Red Lake Reservation, all of said lands have become populated with white and civilized people, and excepting such reservation, all such territory has been opened up to settlement, and with the exception of a few square miles of land remote from railroads and streams, all such territory is organized into political subdivisions under such organized form of Government as is prescribed by the laws of the State of Minnesota, and in the various communities in said territory, except in very remote portions thereof, the degree of civilization is as advanced as in older portions of said State, and in the larger portion of said territory various branches of industry have been established and commercial interests have grown up and the circumstances existing at the time of the making of said treaty of 1855 have materially and completely changed. That according to the returns of the United States census of 1910, there is now in the counties affected by said treaty of 1855, a total white population of 382,191.

And your orators further say and represent that a large strip of territory completely surrounding the said Red Lake Reservation, the said strip of land being a part of the Red Lake Reservation ceded to the United States during the year 1890, under and pursuant to

the provisions of the act of Congress of January 14, 1889, as 101 hereinbefore stated, is now and is admitted by the officials of the United States Government to be, exempt from the provisions of any treaty relative to the introduction of intoxicating liquors into "the Indian country," and that the sale of intoxicating liquors in the territory between the said Red Lake Reservation and the said city of Bemidji and the territory immediately surrounding the same is permitted by the U. S. Government, and there is and exists a strip of land about fifteen miles in width, into which it is lawful, and so admitted by the Interior Department of the United States, to introduce intoxicating liquors, and in which territory there now is, and for more than six years last past have been, seven saloons engaged in selling intoxicating liquor of all kinds. That two of said saloons are within one and one-half miles of the southern boundary of the Red Lake Indian Reservation, and in said territory and within three miles of said reservation are three saloons selling intoxicating liquors that were conducted and in operation more than twelve years ago, and in order to reach the said city of Bemidji it is necessary for such Indians as reside on said Red Lake Reservation to cross over the said strip of territory so opened and recognized to be open to the sale of and traffic in intoxicating liquors.

That if such Indians travel by railroad to points outside of said reservation, and especially to said city of Bemidji, they must pass on

one line of railway two saloons, and upon the other line of railway four saloons within said territory into which it is lawful to introduce intoxicating liquors.

And may it please your honors to grant unto your orators a writ of subpoena of the United States of America issuing out of and under the seal of this honorable court, directed to the said defendants, W. E. Johnson, T. E. Brents, and H. F. Coggeshall, and thereby commanding them, and each of them, on a certain day to be therein named, and under a certain penalty, to be and appear before this honorable court and then and there to answer, but not under oath—such oath being expressly waived—all and singular, and that each stand to perform and abide by such order, direction, and decree as may be made against them in the premises, and as shall seem to your honors to be meet and agreeable to equity and good conscience.

And your orators pray that a temporary injunction may issue against the said defendants, W. E. Johnson, T. E. Brents, and H. F. Coggeshall, enjoining and restraining them, and each of them and each of their agents, servants, employees, and deputies, and all persons claiming to act by, through, and under them, from going upon the respective premises of the said several complainants particularly described herein, and from molesting or interfering with them, or either of them, in the conduct of their business as saloon-

102 keepers, or in conducting bars and in selling and disposing of vinous, spirituous, malt, and other intoxicating liquors, including beer, ale, and porter, while engaged in said business and in conducting the same with persons having no Indian blood, and under the pretense and claim that it is unlawful to sell and dispose of said liquors in the territory embraced within the limits of the said city of Bemidji, and from taking into their possession, or molesting or interfering with, seizing, or destroying any of the stock or stocks on hand or in the possession of either of the said complainants, or any of the personal property of said complainants used in connection with such business, either now situated upon said premises or which complainants may hereafter acquire, place, or keep within any building upon either of said premises.

May it please your honors to grant unto your orators a writ, or writs, of injunction, issuing out of your honorable court, or issued by one of your honors, according to the ordinary course and practice of this court in such cases made and provided, directing, commanding, enjoining, and restraining said defendants, their agents, servants, deputies, and all persons claiming to act for, *thru*, or under them, and each and every person whomsoever, from going upon the respective premises of said complainants, particularly described herein, or to which they may remove in the said city, and from molesting or interfering with them, or either of them, in the conduct of their business as saloon-keepers, or in conducting bars, and in selling and

disposing of vinous, spirituous, malt, and other intoxicating liquors, including beer, ale, and porter, while engaged in said business, and in conducting the same with persons having no Indian blood, and under the pretense and claim that it is unlawful to sell and dispose of said liquors in the territory embraced within the limits of the said city of Bemidji, and from taking into their possession, or molesting or interfering with, seizing, or destroying any of the stock or stock on hand or in the possession of either of the said complainants, or any of the personal property of said complainants used in connection with such business, whether as now situated upon said premises or which complainants may hereafter acquire, place, or keep within any building on either of said premises.

103 And your orators further pray that until said temporary injunction shall issue, your honors may issue a temporary restraining order against said defendants, and each of them, and their agents, servants, deputies, and all persons claiming to act, or acting for, *thru*, or under them, and in form and to the effect above prayed for; and may it please your honors to grant unto your orators such other and further relief as the facts and circumstances of the case warrant and require, and to this honorable court shall seem meet, and your orators, as in duty bound, will ever pray.

SPONNER & BROWN,
E. E. McDONALD,
Solicitors for Complainants.

104 STATE OF MINNESOTA, } ss.
COUNTY OF BELTRAMI. }

Edwin Gearlds and John A. Dalton, being each duly sworn according to law, severally depose and say: I am one of the complainants mentioned in the foregoing bill and have read the same, and the same is true of my own knowledge, except such matters as are therein stated on information and belief, and as to such matters I believe it to be true.

EDWIN GEARLDS.
JOHN A. DALTON.

Subscribed and sworn to before me this 27th day of March, 1911.
[SEAL]

E. E. McDONALD,

Notary Public, Beltrami County, Minnesota.

My commission expires May 16th, 1917.

(Indorsed:) Filed Mch. 28, 1911. Henry D. Lang, clerk, by Geo. F. Hitchcock, jr., deputy.

105 And on April 20th, 1912, the following reamended answer was filed of record in said cause, to wit:

106 In the District Court of the United States, District of Minnesota, Fourth Division. No. 1007.

EDWIN GERALDS, L. J. KRAMMER, FRED E. Brinkman, E. E. Gerald, Albert Marshik, John A. Delton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, complainants,

vs.

W. E. JOHNSON, T. E. BRENTS, AND H. F. Coggesshall, defendants.

Reamended answer.

The joint and several reamended answer of William E. Johnson, Thomas E. Brents, and Harold F. Coggesshall, the defendants, to the amended bill of complaint of the complainants in the foregoing entitled action.

These defendants, respectively, now and at all times saving to themselves all and all manner of benefits and advantages of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answer, saying:

These defendants upon information and belief admit that the plaintiffs are each and all residents of the city of Bemidji, in the county of Beltrami, in the State of Minnesota, and severally engaged in the business of saloon-keeper and in selling at retail spirituous, vinous, and malt liquors in the several places and buildings in said city mentioned, and that said plaintiffs, and each of them, complied with the laws of the State of Minnesota, prescribing the conditions under which a citizen of said State is authorized to engage in the business of selling intoxicating liquors at retail, as more particularly set forth and described in said bill of complaint.

Upon information and belief, the defendants further admit that the value of the business and property of the several plaintiffs in controversy in this suit exceeds the sum of two thousand dollars (\$2,000.00), exclusive of interests and costs, as stated and alleged in said bill.

107 These defendants, respectively, do not know and can not set forth as to his or either of their beliefs, or otherwise, whether or not it is a fact that the plaintiffs, or any of them, have complied with and observed all the laws of the United States and of the State of Minnesota providing against the sale of liquor to Indians, but these defendants deny that the plaintiffs have endeavored to obey and have obeyed and observed all the laws of the United States regulating the sale and traffic in intoxicating liquors, and aver that the plaintiffs, and each of them, have, in disregard and in violation of article 7 of the said treaty of February 22, 1855, referred to and set out in full

in said bill of complaint, and of the laws of the United States referred to in said bill, unlawfully introduced and caused to be introduced into the said city of Bemidji spirituous, vinous, and malt liquors, which these defendants allege is in Indian country. These defendants further admit that during all the time intervening since the making of the treaty between the United States and the Chippewas of the Mississippi on the 19th day of March, 1867, and proclaimed April 18, 1867, the United States has, through its Internal Revenue Bureau, issued within the whole of said territory receipts for special tax on the business of retail liquor dealers upon application therefor and the payment of such special tax.

These defendants, upon information and belief, and for the purposes of this suit, further say that the allegations of said bill, descriptive of the conditions now existing in the territory comprised within the exterior boundaries of the cession made under the said treaty of February 22, 1855, with respect to the organization of said territory into counties, towns, villages, and cities, and the construction and operation into and through the same of railroads, the settlement therein of white people, the erection of buildings, the values of property, and the growth in wealth and population, are substantially true and correct, as in said bill set forth. These defendants further admit that since the said treaty between the United States and the Chippewas of the Mississippi, proclaimed April 18, 1867, all lands therein ceded by said Indians to the United States have been public lands open to entry and settlement under the public land laws of the United States.

For their further answer to said bill these defendants say that certain lands were set apart for the use and occupancy of the Chippewa Indians of Minnesota under the provisions of the treaties in said bill referred to and particularly described and therein 108 designated as White Earth and Leech Lake Reservations; that upon each body of said lands an agency is maintained by the United States for the supervision of the business and affairs of said Indians and the disbursement of annuities due them from the Government, and at each agency the United States maintains a superintendent and special disbursing agent with offices and a corps of clerks, as well as schools for the education of the Indian children; that at the White Earth Agency 5,600 Indians are carried on the annuity rolls, and at the Leech Lake Agency the names of 1,750 Indians appear upon such rolls; that the majority of these Indians reside upon the lands embraced within the said reservations as defined by said treaties, and which lands when so reserved were within the boundaries of the ceded territory under the said treaty of 1855.

These defendants admit that in consequence of the elevation of said Indians to the plane of citizenship by operation of the general allotment act of February 8, 1887, tribal relations among said Indians have ceased to exist, and their former unity and organization for the regulation and government of tribal affairs have disappeared, except in so far as the same may be deemed to continue

by reason of the following facts: The Indian appropriation acts of April 30th, 1908 (35 Stat., 70 to 82); March 3rd, 1909 (35 Stat., 792); April 4th, 1910 (36 Stat., 269, 276); March 3rd, 1911 (36 Stat., 1056 to 1065), have made appropriations to the executive committee of the White Earth band of Chippewa Indians in Minnesota out of the funds belonging to said band. The United States maintains two resident agents among these Indians, viz, Major John R. Howard, at White Earth, Minnesota, and Mr. John T. Giegoldti, Leech Lake Agency, at Onigum, Minnesota, whose duties and powers are prescribed by chapter 1, title 28, of the Revised Statutes of the United States, and by regulations of the Indian Office of 1904 approved by the Secretary of the Interior. The United States also maintains schools among these Indians for their education and civilization, viz, at Leech Lake, a boarding school at old agency, Squaw-point; Sugar Point; White Earth, a boarding school, at Pine Point; Wild Rice River; Beaulieu; Buffalo River; Elbow Lake; Poplar Grove; Pottersville; Round Lake; and White Earth, having together an average attendance of 454 pupils, all of which agencies for the civilization and elevation of said Indians are maintained by the United States for the discharge of its duties to its Indian wards and in intended exercise of its powers granted by the Constitution of the United States.

109 That the schools herein referred to are maintained out of the trust fund created by section 7 of the Nelson Act of January 14, 1889.

That said agent at White Earth Agency is paid from the treaty appropriation for support of Chippewas of the Mississippi according to the act of March 3, 1911 (36 Statutes L., 276).

That the agent at Leech Lake Agency is paid from interest on Chippewa funds pursuant to section 7 of the act of January 14, 1899 (25 Statutes L., 645).

The defendants further admit that any monies now paid to any of the Chippewa Indians in the way of annuities or otherwise are not paid under any of the provisions of the said treaty of February 22, 1855, but, on the contrary, all monies now and for many years past paid by the Government to and received by any of such Indians are paid and received under acts of Congress and the treaties made between such Indians and the Government subsequent to and independently of said treaty of 1855.

These defendants, upon information and belief, and for the purposes of this suit, admit that the Indians residing upon and occupying the territory comprised in said cession of 1855, including said White Earth and Leech Lake Reservations, are generally speaking, either allottees under acts of February 8, 1887, and January 14, 1889, or descendants of such allottees, and that said reservations are principally allotted to the Indians entitled to such allotments, and a large portion of said White Earth Reservation is now owned in fee by white men and Indians; and with respect to the lands lying within the boundaries of the territory defined by said treaties estab-

lishing the White Earth and Leech Lake Reservations, conditions thereon and therein are substantially as set forth and represented in complainant's said bill.

These defendants further say that the Indians above referred to are the same Indians, or descendants of the bands of Indians, that were parties to the said treaty of February 22, 1855, and the subsequent treaties particularly referred to in said bill of complaint; that for the purposes of business, pleasure, hunting, trapping, or other diversions, said Indians traverse parts of the region comprised in said cession of 1855, and so visit a large number of towns, villages, and cities in said territory, including the city of Bemidji, at which municipalities spirituous, vinous, and malt liquors are vended at retail with the permission and consent of and as regulated by the statutes of the State of Minnesota, and further admit that by the laws of the State the sale of intoxicating liquor to any person of Indian blood is punishable as a gross misdemeanor and felony.

110 These defendants, further answering, admit, as in said bill stated, that there is a strip of land lying between Red Lake Reservation and the city of Bemidji which is not subject to any law or treaty of the United States prohibiting the introduction of intoxicating liquor therein, and upon information and belief these defendants say that saloons are being operated upon and within said open unrestricted territory, over which the United States has no control, as more particularly set forth in said bill.

These defendants deny that the several acts of Congress and treaties mentioned in said bill and which were enacted and promulgated subsequent to said treaty of 1855, repealed or in any wise modified said article 7 of said treaty of 1855, prohibiting the introduction of intoxicating liquor into the territory thereby ceded, and aver that none of said laws and treaties, or any law or treaty enacted by Congress or promulgated by the President of the United States, has repealed, modified, changed, or weakened the force and effect of said article 7 and the laws of the United States prohibiting the introduction of intoxicating liquor into said ceded territory, which these defendants allege is by virtue thereof Indian country.

Further answering, these defendants, upon information and belief, admit that the plaintiffs have respectively established a business in said city of Bemidji as set forth in said bill of complaint, and that the said business of the several plaintiffs will be affected by the threatened or intended acts of these defendants, unless restrained or enjoined from so doing, and that the plaintiffs have a common interest in this suit in which they are joined to avoid a multiplicity of actions, and the defendants further admit that they are respectively citizens and residents of States other than Minnesota, as alleged in said bill. These defendants admit and aver that at no time since the cession by the Chippewa Tribe of Indians of the Mississippi by treaty set forth in the bill herein, ratified April 8, 1867, and proclaimed April 18, 1867, of lands therein described, until September

17, 1909, did the United States Government or its officers attempt to enforce within the said territory any provisions of article 7 of the treaty made between the United States and the Mississippi, Pillager, and Lake Winnebegoshish Bands of Chippewa Indians, made and concluded February 22, 1855, or any law of the United States relating to the introduction of vinous, spirituous, or malt liquors into the Indian country, except that in 1905 the United States 111 instituted criminal prosecution against one Hugh Funk for having introduced in violation of section 7 of said treaty intoxicating liquors into the village of Ball Club, which is within said cession of February 22, 1855.

The defendants aver that on September 17, 1909, said William E. Johnson, as chief special officer of the United States Indian Service, issued an order calling attention to article 7 of the treaty with the Chippewa Indians of February 22, 1855, and gave notice that the provisions of said section would be enforced in the whole portion of Cass County, Minnesota, lying above Township 138 north, warning all liquor dealers north of said Township 138 to close their saloons and remove all their intoxicating liquors to points outside of said district of Cass County before October 17, 1909.

That on November 29, 1909, said chief special officer gave like notice that after December 27, 1909, said article 7 of said treaty would be enforced throughout those districts of the State of Minnesota described as all of Becker and Hubbard Counties, all of Itasca County west of range 26 and south of Township 147 north, all of Norman County east of range 45, all of Polk County east of range 45 and south of Township 148 north, and all of Clearwater County south of Township 148 north.

That on January 15, 1910, said chief special officer, for information of liquor dealers, published a list of railway stations in Minnesota, within the territory ceded by said treaty of February 22, 1855, in which, assuming to act for the Government, he and his associates were enforcing and attempting to enforce the provisions of said treaty excluding introduction of intoxicating liquors in said ceded territory.

That on April 8, 1910, said chief special officer gave notice that said article 7 of said treaty would be enforced throughout those districts of Minnesota described as all of Becker, Hubbard, and Mahnomen Counties, and those portions of counties of Beltrami south of Township 148 north and west of range 33; Cass, Crow Wing, Ottertail, and Wadena north of Township 136, Clay north of Township 139 east of range 46, Clearwater south of Township 148 north, Itasca south of Township 147 north and west of range 26 west of the fourth principal meridian, Norman south of Township 148 north and east of range 45.

That all such acts and orders of said chief special officer were by direction and approval of the Commissioner of Indian Affairs, and in enforcement of such orders 275 saloons were closed within this

territory, six saloon keepers were indicted, and about 1,300 gallons of whiskey were destroyed.

112 These defendants admit that each and all of the terms and provisions of the act of Congress entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January 14, 1889, generally known as the Nelson Act, and each and all of the terms and provisions of the act of Congress entitled "An act to provide allotments to Indians on White Earth Reservation in Minnesota," approved April 28, 1904, generally known as the Steenerson amendment, were by the several bands of Indians therein named and thereby affected, duly approved, accepted, and ratified; and substantially everything required to be done under said acts of Congress, either by the United States or the President thereof, or by either of the several bands of Indians, has been done to make and render each of the several terms and provisions of said acts operative and effective, and thereby the Indian title to all the lands mentioned or described in either of said acts became completely extinguished, except that there are some allotments which are being exchanged for benefit of some of said Indians, so that to the extent of such exchange of some allotments the provisions of said acts have not been fully complied with or work of such allotment fully closed.

These defendants further say that all the acts and things set forth and complained of in said bill as having been done or threatened to be done and performed by these defendants were each and all done, threatened, or intended, as claimed by these defendants, in the execution of the duties devolved upon them respectively as special officers of the United States, appointed thereto by the honorable Secretary of the Interior, for the suppression of the liquor traffic among Indians, agreeably to the laws of the United States enacted for the accomplishment of that end, and that they have not, and do not intend to do any act or thing, either as alleged in said bill of complaint or otherwise except as authorized and directed by the said laws of the United States pursuant to their respective appointments as officers of the United States charged with the duty of enforcing said laws and treaties, whereby the introduction of intoxicating liquors into Indian country is declared unlawful, and these defendants aver that the city of Bemidji, named in said bill, is situate within Indian country within the spirit and intent of said treaty and the laws of the United States prohibiting the introduction of intoxicating liquors into Indian country and providing for its seizure and condemnation when found therein.

113 And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by said bill charged, without this: that there is any other matter, cause, or thing in the said plaintiff's bill of complaint contained, material or necessary for these defendants to make answer unto and not herein or hereby well and sufficiently answered, confessed, traversed, and

avoided or denied, is true to the knowledge and belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

CHARLES C. HOUPt,
United States Attorney and Solicitor for Defendants.

(Indorsed:) Filed Apr. 20, 1912.

114 And on the same day the following stipulation submitting the cause upon the amended bill and reamended answer was filed of record in said cause, to wit:

115 In the District Court of the United States, District of Minnesota, Fourth Division, No. 1007.

EDWIN GEARLDS, L. J. KRAMER, FRED E. BRINKMAN,
E. E. Gearlds, Albert Marshik, John A. Dalton,
Edwin Fay, F. S. Lycan, John H. Sullivan, Harry
Gunsalus, J. E. Maloy, and Tillie Larson, complainants,

Stipulation.

W. E. JOHNSON, T. E. BRENTS, AND H. F. COGGESHALL, defendants.

It is stipulated and agreed in the action above entitled:

I. That the time in which the defendants may file their reamended answer is extended to include the 20th day of April, 1912.

II. That said cause be, and hereby is, submitted to the court upon the amended bill and reamended answer filed herein for hearing and determination without further pleadings or proceedings and a decree rendered upon said bill and answer; that said cause is hereby set down for hearing before said court at the post-office building in the city of Minneapolis, in said State and district, on Saturday, the 20th day of April, 1912, at ten o'clock a. m.

CHARLES C. HOUPt,

Solicitor for Defendants.

MARSHALL A. SPOONER & E. E. McDONALD,

Solicitors for Complainants.

Dated St. Paul, Minn., April 18th, 1912.

(Endorsed:) Filed Apr. 20, 1912. Charles L. Spencer, clerk, by
Geo. F. Hitchcock, jr., deputy.

116 And on the same day the following judgment and decree was filed and entered of record in said cause, to wit:

117 In the District Court of the United States, District of Minnesota, Fourth Division. No. 1007.

EDWIN GEARLDS, L. J. KRAMMER, FRED E. BRINKMAN, E. E. Gearlds, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, complainants,

vs.

W. E. JOHNSON, T. E. BRENTS, and H. F. COGGESHALL, defendants.

This cause came on to be further heard at the April, 1912, term of this court on the twentieth day of April, 1912, at ten o'clock a. m., and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That the temporary injunction heretofore issued in the said cause be and the same hereby is made permanent and the defendants above named and each of them are hereby enjoined and restrained, and each of their agents, servants, deputies, and all persons claiming to act for, through, or under them, is and are enjoined and restrained from going upon the respective premises of the said complainants particularly described in the bill in said action or to which either of the said complainants may remove in the city of Bemidji, Beltrami County, Minnesota, and from molesting or interfering with the complainants or either of them in the conduct of the business of either of them as saloon keeper or in conducting bars and selling and disposing of vinous, spirituous, malt, and other intoxicating liquor, including beer, ale, and porter, while engaged in said business, and in conducting the

same with persons having no Indian blood, either under the 118 pretense and claim that it is unlawful to sell and dispose of any of such liquors, beer, ale, or porter in the territory embraced within the limits of the said city of Bemidji or at all, and from taking into their or either of their possession or molesting or interfering with, seizing, or destroying any of the stock or stocks of such liquors, beer, ale, or porter on hand, or in possession of either of the said complainants, or from taking into possession or molesting or interfering with, seizing, or destroying any of the personal property of either or any of said complainants, used in connection with either or any of the kinds of business hereinbefore mentioned, whether the same is conducted upon any of the premises hereinbefore referred to or upon premises which complainants, or either of them, may hereafter acquire in said city of Bemidji.

Dated April 20, 1912.

CHARLES A. WILLARD, *Judge.*

An exception is allowed defendants to the entry of the foregoing decree.

CHARLES A. WILLARD, *Judge.*

(Endorsed:) Filed Apr. 20, 1912. Charles L. Spencer, clerk, by Geo. F. Hitchcock, jr., deputy.

119 And on May 20th, 1913, the following papers on appeal were filed in said cause, to wit: Petition for appeal and order

allowing same, assignment of errors, stipulation waiving bond on appeal, and citation with admission of service thereon.

120 In the District Court of the United States, District for Minnesota, Fourth Division. No. 1007.

EDWIN GERALDS, L. J. KRAMMER, FRED E. BRINKMAN, E. E. Gerald, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, complainants and appellees,

v/s.

W. E. JOHNSON, T. E. BRENTS, AND H. F. COGGESHALL, defendants and appellants.

PETITION FOR APPEAL.

Comes now W. E. Johnson, T. E. Brents, and H. F. Coggeshall, defendants and appellants in the above-entitled cause, and, conceiving themselves aggrieved by the decree of the district court made and entered in the above-entitled cause on the 20th day of April, 1912, by the United States District Court for the District of Minnesota, Fourth Division, do hereby appeal from said decree of said United States District Court to the Supreme Court of the United States; and these appellants pray that said appeal may be allowed and that a transcript of the record and proceedings herein and upon which said decree was made and entered, duly authenticated, may be transmitted to the United States Supreme Court.

Dated May 12, A. D. 1913.

CHARLES C. HAUPT,
United States Attorney, and
Solicitor for Defendants and Appellants.

And now, to wit, on this 12th day of May, A. D. 1913, it is Ordered, that the above appeal in the above-entitled cause be, and it is hereby, allowed as prayed.

CHARLES A. WILLARD,
District Judge.

(Indorsed:) Filed May 20, 1913.

121 In the District Court of the United States, District of Minnesota, Fourth Division. No. 1007.

EDWIN GERALDS, L. J. KRAMMER, FRED E. BRINKMAN, E. E. Gerald, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, complainants and appellees,

v/s.

W. E. JOHNSON, T. E. BRENTS, AND H. F. COGGESHALL, defendants and appellants.

ASSIGNMENT OF ERRORS.

Comes now the above-named defendants and appellants, W. E. Johnson, T. E. Brents, and H. F. Coggeshall, and make and file the following assignment of errors, upon which they will rely in their

appeal from the decree of the court above named, made and entered herein, on the 20th day of April, 1912, as follows, to wit:

I. The court erred in holding and deciding in its decision overruling the defendants' demurrer to the plaintiffs' bill of complaint, as follows:

"I can come to only one conclusion in the case, and that is that the provision in article 7 of the treaty of 1855, which prohibited the introduction of intoxicating liquors into ceded territory, was repealed by the act admitting Minnesota into the Union."

II. The court erred in overruling the demurrer to complainants' bill of complaint.

III. The court erred in its order granting a temporary injunction as prayed in plaintiffs' bill of complaint.

IV. The court erred in adjudging and decreeing that the temporary injunction be made permanent.

V. The court erred in the entry of the final decree in the above-entitled cause.

122 VI. The court erred in making and entering a decree restraining the defendants and appellants from proceeding in the discharge of their duties as set forth in their answer herein.

VII. The court erred in decreeing that the city of Bemidji, mentioned in the complainants' bill of complaint, was not subject to the restrictions provided for in said article 7 of the treaty of 1855.

VIII. The court erred in not entering a decree herein dismissing the complainants' bill of complaint.

Wherefore the defendants and appellants, W. E. Johnson, T. E. Brents, and H. F. Coggeshall, pray that said decree of the District Court of the United States for the District of Minnesota, Fourth Division, be reversed with directions to enter decree in favor of defendants and appellants, and against the complainants and appellees in accordance with the prayer of this appeal and the prayer of the amended answer of defendants in this cause.

CHARLES C. HOUPt,
*United States Attorney and Solicitor
for Defendants and Appellants.*

(Indorsed) : Filed May 20th, 1913.

123 In the District Court of the United States, District for Minnesota, Fourth Division. No. 1007.

EDWIN GERALDS, L. J. KRAMMER, FRED E. BRINKMAN, E. E. Gerald, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, complainants and appellees,

vs.
W. E. JOHNSON, T. E. BRENTS, AND H. F. COGGESHALL,
defendants and appellants.

STIPULATION.

It is hereby stipulated and agreed by and between the parties to the cause above entitled, by their respective solicitors, that the mak-

ing and filing of a bond herein by appellants is hereby waived and that the failure to file an appeal bond herein shall work no detriment to the appellants upon this appeal.

It is further stipulated that the complainants and appellees shall not be considered to have waived any other rights to which they may be entitled by reason of this stipulation, nor to have consented to said appeal by reason of this stipulation.

E. E. McDONALD,
Solicitor for Complainants and Appellees.

CHARLES C. HOUPT,
*United States Attorney and Solicitor
for Defendants and Appellants.*

Dated May 16, 1913.

(Indorsed) : Filed May 20th, 1913.

124 In the District Court of the United States, District for Minnesota, Fourth Division. No. 1007.

EDWIN GERALDS, L. J. KRAMMER, FRED E. BRINKMAN, E. E. Geralds, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, complainants and appellees,

v/s.

W. E. JOHNSON, T. E. BRENTS, AND H. F. COGGESHALL, defendants and appellants.

CITATION.

UNITED STATES OF AMERICA, *ss.*:

To Edwin Geralds, L. J. Krammer, Fred E. Brinkman, E. E. Geralds, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, complainants and appellees, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, in the District of Columbia, within 60 days from the date hereof, pursuant to an appeal duly taken and allowed from that certain decree of the District Court of the United States for the District of Minnesota, Fourth Division, in that certain cause wherein W. E. Johnson, T. E. Brents, and H. F. Coggeshall are defendants and appellants, and you, the said Edwin Geralds, L. J. Krammer, Fred E. Brinkman, E. E. Geralds, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson are complainants and appellees, to show cause, if any there be, why the decree mentioned should not be set aside and corrected, and why speedy justice should not be done the parties in that behalf.

Witness the honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 12th day of May, A. D. 1913.

CHARLES A. WILLARD,
District Judge.

125 STATE OF MINNESOTA,
County of Beltrami, ss:

Hiram A. Simons, being first duly sworn, deposes and says that on the 13th day of May, 1913, at 3 o'clock p. m. of said day, he served the attached citation upon Marshal A. Spooner, Esq., at his office in the city of Bemidji, in the county and State aforesaid, by handing to and leaving with the said Marshal A. Spooner a true and correct copy thereof.

[SEAL.]

HIRAM A. SIMONS.

Subscribed and sworn to before me this 16th day of May, A. D. 1913.

T. C. BAILEY,
Notary Public, Beltrami County, Minn.

My commission expires 3-22-1920.

126 STATE OF MINNESOTA,
County of Beltrami, ss:

Hiram A. Simons, being first duly sworn, deposes and says that on the 16th day of May, 1913, at 10 o'clock a. m. of said day, he served the attached citation upon Elmer E. McDonald, Esq., at his office in the city of Bemidji, in the county and State aforesaid, by handing to and leaving with the said Elmer E. McDonald a true and correct copy thereof.

[SEAL.]

HIRAM A. SIMONS.

Subscribed and sworn to before me this 16th day of May, A. D. 1913.

T. C. BAILEY,
Notary Public, Beltrami County, Minn.

My commission expires 3-22-1920.

127 (Indorsed:) Service of the within and foregoing citation is hereby admitted at Bemidji, Minnesota, this 16th day of May, A. D. 1913. E. E. McDonald, attorney and solicitor for complainants. Filed May 20, 1913. Charles L. Spencer, clerk, by Clara M. Owens, deputy.

128 And on July 7th, 1913, the following order, enlarging the time for docketing the appeal in this cause, was filed of record with the clerk of the Supreme Court of the United States, to wit:

129 In the District Court of the United States, District of Minnesota, Fourth Division.

EDWIN GERALDS, L. J. KRAMER, FRED E. BRINKMAN, E. E. Gearlds, Albert Marshik, John A. Dalton, Edwin Fay, F. S. Lycan, John H. Sullivan, Harry Gunsalus, J. E. Maloy, and Tillie Larson, complainants and appellees,

vs.

W. E. JOHNSON, T. E. BRENTS, AND H. F. COGGESHALL, defendants and appellants.

United States Circuit Court, No. 1007. In equity.

For good cause shown, I, Charles A. Willard, judge of said court, who signed the citation in the above-entitled action, requiring the above-named complainants and appellees to be and appear at the Supreme Court of the United States within sixty days from the 12th day of May, A. D. 1913, do hereby enlarge the time within which the above-named defendants and appellants may docket said action and file the record thereof with the clerk of said Supreme Court of the United States for a period of sixty days, so that said action may be so docketed and said record thereof so filed with said clerk on or before the 9th day of September, A. D. 1913.

CHARLES A. WILLARD,
United States District Judge.

Dated, Minneapolis, Minn., July 7, 1913.

(Indorsed:) Filed July 7, 1913.

130 And on August 1st, 1913, the following praecipe for a transcript of certain papers for delivery to the Solicitor General of the United States was filed of record in said cause to wit:

131 United States District Court, District of Minnesota, Fourth Division.

EDWIN GEARLDS ET AL., COMPLAINANTS AND APPELLEES,

v.

W. E. JOHNSON ET AL., DEFENDANTS AND APPELLANTS.

In equity,
No. 1007.

The clerk of said court will please make a transcript of the following papers in the above-entitled cause to be delivered to me for transmission to the Solicitor General of the United States, viz:

1. Amended bill of complaint of January 9, 1911.
2. Demurrer to amended bill.
3. Order overruling demurrer and exception thereto.
4. Opinion of court overruling demurrer.
5. Order for temporary injunction.
6. Amended bill filed March 28th, 1911.
7. Reamended answer filed April 20, 1912.

8. Stipulation submitting case on bill and answer.
9. Final decree.
10. Appeal papers.

CHAS. C. HOUPT,

United States Attorney and Attorney for Appellees.
(Indorsed:) Filed Aug. 1st, 1913.

132 United States of America, District Court of the United States,
District of Minnesota, Fourth Division.

I, Charles L. Spencer, clerk of said District Court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 131 pages, numbered consecutively from 1 to 131, inclusive, is a true and complete transcript of such records, process, pleadings, orders, final decree, and other proceedings in said cause as are called for in the praecipe of the United States attorney, a copy of which is hereto attached, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Minneapolis, in the District of Minnesota, this 14th day of August, A. D. 1913.

[SEAL.]

CHARLES L. SPENCER, Clerk.
By GEO. F. HITCHCOCK, Jr.,
Deputy Clerk.

(Indorsement on cover:) File No. 23953. Minnesota, D. C., U. S.
Term No. 802. W. E. Johnson, T. E. Brents, and H. F. Coggeshall,
appellants, vs. Edwin Gearlds, L. J. Krammer, Fred E. Brinkman
et al. Filed December 4th, 1913. File No. 23953.

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In the Supreme Court of the United States

OCTOBER TERM, 1913.

W. E. JOHNSON, T. E. BRENTS, AND H. F.
Coggeshall, appellants,
v.
EDWIN GEARLDS, L. J. KRAMMER, FRED E.
Brinkman, et al. } No. 802.

**APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF MINNESOTA.**

MOTION BY THE UNITED STATES TO ADVANCE.

The Solicitor General, on behalf of the United States, respectfully moves the court to advance the above-entitled cause for argument.

This is a suit in equity brought by 12 licensed saloon keepers of the city of Bemidji, State of Minnesota, against the appellants, special officers of the United States Indian Service. The bill alleged that the defendants had directed the complainants to desist from engaging in the liquor business in Bemidji and had threatened, if the complainants failed to observe this order, to close their

places of business and destroy their stocks of liquor, under color of the authority conferred by article 7 of the treaty of February 22, 1855, with the Chippewa Indians, 10 Stat. 1165, 1169, which provides that the laws of Congress—

which prohibit the introduction, manufacture, use of, and traffic in, ardent spirits, wines, or other liquors, in the Indian country, shall continue and be in force within the entire boundaries of the country herein ceded to the United States, until otherwise provided by Congress.

It is conceded that Bemidji is within these boundaries.

The bill sought to enjoin the threatened interference with complainants' business and destruction of their property.

The appellants' demurrer to the bill was overruled by the district court, which held that the treaty provision in question was repealed by the acts of February 26, 1857, 11 Stat. 166, and of May 11, 1858, 11 Stat. 285, admitting Minnesota to statehood, particularly by the first section of the latter act, which provides:

That the State of Minnesota shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

A temporary injunction was issued. Appellants thereupon answered, setting up in terms the au-

thority of the treaty, and after hearing the injunction was made permanent.

The appellants bring the case here for a review of the district court's ruling against the validity of the treaty of 1855.

The case plainly involves a matter of general public interest. The greater portion of the Territory of Minnesota north of the forty-sixth parallel of latitude was conveyed to the United States by the treaty of 1855. The counties of the State of Minnesota affected by said treaty contained, in 1910, a total white population of 382,191. (R. 54, 63.) The enforcement of the Federal liquor laws relating to Indian country, and hence the sale of any liquor whatsoever within this territory, depend upon the decision of this case.

Opposing counsel concur in this motion.

JOHN W. DAVIS,
Solicitor General.

FEBRUARY, 1914.

